

1102. 2. 6
8
Thoughts on the English Government.

ADDRESSED TO THE
QUIET GOOD SENSE
OF THE
PEOPLE OF ENGLAND.

IN A SERIES OF LETTERS.

LETTER THE SECOND.

The Design of the first Letter vindicated—Authorities from Records, Law Writers, and others, to support its Doctrines—Hale, Coke, Clarendon, Whitlock, Hooker, Mr. Burke, Mr. Pitt, Lord Thurlow, the present Attorney-General—The Expression of three Estates, three Branches of the Legislature, and King, Lords, and Commons, considered—Censure of Opinions from Montesquieu, Locke, and other Philosophising Politicians—Criticism on Blackstone and Wooddeson—Defence of the Paragraph prosecuted as libellous—The Author's Accusers proved guilty of Præmunire—The Author's Political Creed delivered in Nineteen Propositions—Expostulations on the Prosecution of Mr. Reeves.

Verily ye shall say, "Why have we persecuted him;
"Seeing the truth of the matter is found with him?"

JOB xix. 28. Kennicot's Rem. 168.

L O N D O N.

PRINTED FOR J. WRIGHT, OPPOSITE OLD BOND STREET,
PICCADILLY.

1799.

Dum sibi Septennes Ramos ponitque, novatque,
Perque vices Trunco, vël frondibus efficit umbram,
Subjectique alitur succis, quem protegit, agri,
Accipiens, donansque simul, stat REGIA QUERCUS
Æternum fixa, et nullo mutabilis ævo.



ADVERTISEMENT

BY THE EDITOR.

THE following Letter is intended to explain, and vindicate such passages in the first of these letters, as were brought into question by the very singular censure passed upon them: It further contains an attempt to analyse the structure of our government, in order to ascertain the true legal frame of its Constitution, and the principles upon which it performs its operations. Such disquisitions arose out of the Defence that was forced upon the Author, and more particularly on his Editor; but these not being upon topics, that were immediately before the Public; and the Defence itself appearing every day less important, as the opinion became more general, that the author stood less in need of one, than his adversaries, the work has been suffered to lie by, till some fit occasion for publication, should, perchance, present itself.

Such

Such occasion seems to have been offered by the design of uniting the two kingdoms of Great Britain, and Ireland. This measure has already led to the agitating of some nice questions of a Constitutional nature, that are nearly connected with the most material topics canvassed in this letter ; and the author, accordingly, thinks he has now a fair opportunity of taking part in a debate, which if useful, he may have his share in forwarding to a prosperous issue ; if otherwise, he is, at least, clear from the blame of beginning.

It must, I think, be allowed that the design of incorporating into one body the Lords and Commons of the two kingdoms, cannot be projected, in the way proposed, before we have made up our minds, that those bodies are transient, subsidiary, and occasional, while the substantive power of the King remains unchanged, and permanent ; and that, consistently with the constitutional mechanism of the Monarchy, the houses of parliament may be detached, without diminishing the capacity and power of the main spring placed in the Crown, upon which, all the operations of the government depend. Yet such a view as this, (not indeed in the same imagery) of
the

the comparative durability of the King, and his parliament, in the first of these letters, was then thought to be derogatory to the two houses of parliament; tho' it might be exemplified to the understanding of any common man, in the periodical vicissitudes of dissolution, and prorogation. Too impatient to stop at these examples, many persons imputed to the Author, that he must mean some more compleat, and indeed a final dissolution; and, (to verify their own comment) they accordingly condemned him, as projecting a violent revolution in the state. As they then put into our Author's mouth, what he never said, they now in return, voluntarily do for him, what he never could have expected. They are now about to realize what they censured him for only supposing, but what in truth he never did suppose. Constitutionally speaking, this Union cannot be effected, without dissolving for ever two parliaments, in order to make an Imperial one in their place for the United Kingdom; and yet, in the words of our Author, "The King is a King still," and survives these final dissolutions of the legislative bodies, "without change or diminution". Thus it is, that speculations, which have been deemed by some idle, and by others criminal

minal, grow, after the heat of opposition is over, to be thought harmless, then rational, and afterwards are made to furnish principles for carrying into effect the wisest measures.

I hope this coincidence will reconcile to our author some of his opponents. In a crisis of public anxiety and trepidation, he was sacrificed to appease a momentary clamour; the fashion and cry of the day are now on his side, and he claims the benefit of them.

It is not, however, merely to vindicate himself, but to assert the true principles of the constitution, that the author seizes the present moment for publication.

Upon the opening of this measure, intended for consolidating the power, and securing the tranquillity of the two kingdoms, I perceive, the competency of parliament to complete such a union has been disputed; and that a supposed sovereignty in the people, who are said to possess a power paramount to the known authorities in the state, has been seriously alledged, as a tenable position. These are points of the first importance; they go to the very root of our establishment; and if they

they are admitted for sound and legitimate, our government, in my opinion, is made amenable to the voice of anarchy, and is at the mercy of every Demagogue.

In this letter will be found some investigations, that bring to the test such mischievous, and unfounded assertions; and, in various parts of it, may be traced some of those principles that will probably be recurred to, in the constitutional discussions now likely to arise, while it is in contemplation to new arrange the legislative functions of the Monarchy, by a Union of the two kingdoms. With what success these disquisitions have been managed by the Author, it is for the Reader to judge; I can only undertake for their being well grounded; having for their basis the law of the land, testified by records, and recognised in daily practice: They are in the nature of a law argument, not indeed addressed to lawyers, but to all persons, who will be at the pains to discriminate and judge for themselves. Such readers, I trust, will, at least allow, that what is here contended for, appears to be the result of an earnest inquiry after truth, conducted in the spirit of fair discussion; and they will, no doubt, excuse,

cuse, as a sacrifice to truth, and fair discussion, the recrimination the author sometimes makes upon Those, who have violated both, by so inconsiderately condemning, as criminal, what in a free country, is permitted and laudable, if any thing is ; namely, an honest endeavour to illustrate the principles of the Constitution, according to the known laws and usages of the realm.

I am aware, that such claims to a hearing from law, and records, from antiquity, and from daily practice, will not exempt many things in this letter from the charge of novelty. The most obvious things may be new, to those who have never sought them ; and sorry am I to say, the principles and form of the English Government are not usually sought, where they may be found ; but something is commonly taken up, and substituted in their place, from the Theories of political writers, who set about teaching others, before they have well taught themselves. Such persons rather look into their own imaginations, than into the subject in question ; above the slow process of analysing and examining what is before them, they conceive a phantom of government, that is agreeable to themselves,

themselves, and reason downwards from that model ; in this manner, they dictate what are the principles and form of our government, and they deny, without scruple, the existence or suitableness of any one article in the establishment, that happens not to conform, in its character, or operations, to their preconceived notions. Hence it is, that no one thing in political affairs, that has been so much talked of, so much written upon, and so much extolled, was ever so little understood, as the Constitution of the English government.

It is the design of the Author to examine some of these erroneous notions, and to exhibit the English government, as it really is; namely, A Monarchy limited by known laws, performing its functions by means of the parliament, the council, and the various officers, and advisers assigned to it by the law, and usage of the Realm.

Impressed with the same sentiments as the author, that the capacity of Monarchy, above all other forms of government, to protect the liberties, rights, and privileges of the subject, consists in the unity of the Supreme
Power

Power in a single person, it seems to me desirable, for a like reason, that the legislative advisers, and counsellors of such supreme power should not be divided into more deliberative assemblies than is required to form a single parliament. Upon these principles, which are, in my opinion, of the essence of our constitution, I profess myself one who shall be glad to see the body politic of Ireland incorporated into the body politic of Great Britain, so as to make one intire Monarchy. The more the intirety of the Monarchy is secured, the more may the functions of it be afterwards exercised, ditributed, or modified, with safety, according to circumstances. My fervent hope is that the King, and the People of these Kingdoms may last for ever! the latter being the great end for which our government (and all government) is instituted; the former being the great means by which it is preserved; and may all the subordinate functions placed by law under the authority of the King, whether they are parliaments, or councils, or offices, be dissolved, or united; reformed, reduced, or changed, if ever, and when ever the good of the people shall require it!

It

It is only in a constitutional view, that I thus speak of the Union with Ireland; there are other considerations of a national kind, such as religion, commerce, and the society at large, which belong to different heads of inquiry, and have no relation to the doctrines and principles which make the subject of this letter.

Respecting the present publication, and the reception I am to bespeak for it with the public, I have little more to add. I should apprise the uninformed reader, that while this second letter has lain by, unpublished, His Majesty's Attorney General has declared publicly in Court, more than once, that, in his opinion, the first of these letters ought not to have been prosecuted; and that he took blame to himself for not declaring so in the late House of Commons and opposing the vote; which he had foreborne to do, only upon reasons of delicacy respecting his office, as the person, who was to conduct the prosecution, if voted; and that he since had thought these reasons should not have prevailed with him to be silent. After this, I trust, such of our readers as take their judgment from good authorities, will come with less prejudice to the perusal
of

of this letter, which avows and defends all the points in the former, that were so mistakenly pronounced to be libellous. I trust also, that after one mistake, so injurious to the reputation of the former editor, who was the object of it, and (like other mistakes) not very creditable to those who made it, these writings will be received with somewhat more liberality and fairness; and that they will first be made the subject of temperate criticism, before they are converted into a matter of crime. A little less earnestness to find out an author, and a little more to find out the meaning of his writings, would have left us all less to regret—but these things are now become a passage of history, and I wish them to be remembered only for our instruction.

I should here add, that whatever form of inquiry, animadversion, or criticism, it may be thought fit to institute with respect to this second letter, there will not be wanting a Person, either to render a reason of its contents, or to be responsible for its publication.

THE EDITOR.

March, 1799.



TO THE
QUIET GOOD SENSE
OF THE
PEOPLE OF ENGLAND.

THE Letter, which I formerly addrest to you, was the result of many serious reflexions upon the state of public affairs, at that season. It may be remembered, that the Jacobin Societies had, during the Autumn of the year 1795, greatly increased in number and in confidence; that, towards the Meeting of Parliament, the spirit and boldness of these deluded persons grew every day more alarming; and that on the day on which his Majesty went to the House, they proceeded to the length of assaulting his Person, and even attempting his life. These appearances of disaffection, and of tendency

B

to

to Revolt made a deep impreſſion, at a time when a ſhort indispoſition, and ſecluſion from ſociety had rendered me, perhaps, more ſuſceptible than uſual of ſtrong apprehenſions. In that ſtate of mind, I put to paper the thoughts, which I afterwards addreſſed to you, and publiſhed, in hopes of doing ſome ſervice to the cauſe of order, and good government. The matter of them appeared to me, and appears to me at this moment, to be peculiarly adapted to the criſis, in which it was publiſhed.

I meant to impreſs upon the ſenſible and thinking part of the community, a regard for the *Conſtitution as eſtabliſhed by law*; and I thought our eſtabliſhment would be recommended to them moſt ſtrongly if it were ſhewn, that it is the one of all others beſt ſuited to the Temper and Character of our Countrymen. I thought this Topic would be much aided and enforced, if I could alſo ſhew, that the attempts which have been made in former times, as well as in the preſent, to calumniate and ſubvert it, originated in ſpeculations and opinions, that were foreign from this Iſland, and not at all ſuited to the national Character of Engliſhmen. In this way

way more than in any other, I thought the democratic notions of the time and the projects of Republicanism, so much cherished by some, might be brought into discredit and exposed to the contempt, as well as hatred, of all true Englishmen.

The late transaction in France, on the 4th of September, has brought me again to the same subject of Governments and Constitutions. This appears to me to furnish another lesson, that may be usefully applied to compose the minds of our countrymen, as to all projects of reforming and making Constitutions: and I feel a great inclination to lay hold on this occasion to resume my speculations on the *English Government*. I had given you an expectation that my former Letter should be followed by others, if my way of thinking, and my method of treating this subject should coincide with the sentiments of that portion of the public, whose *Quiet Good Sense* gives the Law finally in all matters of political and public concern. I have great reason to believe, that what I have hitherto published has met with your approbation. I should have had indeed less reason to be assured of this, had my poor performance

been left to the ordinary chance for success, which is the lot of most publications; but, fortunately for the subject, at least, of my Letter, it has been brought into so much notice, and so canvassed, that you have had an opportunity of pronouncing your sentence plainly and unequivocally, after a thorough hearing and Trial; and this you have done not only in favour of the pamphlet, but in condemnation of those who were the cause of its being brought in question.

But as the principles and doctrines contained in that Letter have been questioned, it becomes me, perhaps, before I proceed to any new disquisition, to say something in defence or apology, for what I have already advanced; and thus entitle myself to the attention and credit of my readers, in any future discussions. I owe this to myself as a justification; I owe it to those who have taken part with me; and I am content to condescend so far even to those who have taken part against me. There is also another consideration that ought to determine me no longer to preserve the silence I have hitherto imposed upon myself. I intended to wait till the Minds of some Men were
a little

a little cooled, and they could hear themselves questioned, and refuted with calmness. That time is I think long since arrived, and it becomes me now, both in a public, and personal view, to vindicate the right to FREEDOM OF DISCUSSION, which has been grossly prejudiced by what has passed. It is now full time for me to make my Claim; and to re-continue, by actual exercise, this valuable franchise, which belongs to me in common with every one of the King's subjects; is enjoyed by all, except me; but may gradually be taken from all, if persons of a particular description are to be singled out, one after another, and abridged of this right, without reclamation. I have no scruple to say that, if the measure, by which I have been scanned, and censured, were to become the Law and Usage of the Realm, there would be an end to the Liberty of the Press; and further, that if it had prevailed as such in former times, there would not now have been a treatise to be found on the Law and Government of the Country; neither the works of *Coke*, nor *Hale*, nor *Blackstone*, much less those of many others, not so systematic and juridical, could have been published. If it were, therefore, only to do away the force of this unadvised precedent,

dent, I think it incumbent upon me to resume my speculations, and to persist in doing the service, I originally intended, of setting our Constitution in its true point of view.

Exception has been taken to several positions in the Letter, but the public attention has been more particularly drawn to one paragraph (p. 12 and 13) which it seems *it is possible* so to construe, as to impute to the author a design to depreciate a part, and material part of the very Constitution which, upon the whole, he professes to extol. This paragraph, I am sorry to say, was afterwards made the subject of a Criminal Information for Libel. I am still more sorry to remember, that the whole of the clamour and charge had nothing better for its foundation than a metaphorical expression—the words, *lopped off and cast into the Fire*, which I there apply to the branches of a Tree.

It was represented by some that I recommended, that the two *branches* of the Legislature should be laid aside, and then the Kingly Government might go on, with all its functions,

tions, legislative as well as executive, without them.

In answer to this, I think I might very successfully contend, that the words do not of themselves *require* that construction; that, taken with the context, they do not *bear* such construction; that the opinion, or wish (be it which it may) is in itself so absurd that it ought not to be imputed to any body, who is not a madman or a fool; and that least of all, should it be imputed to an author, who through the whole of the work in question, contends for nothing else, but that the Government, Laws, and Constitution should continue just as they are now by Law established; cautioning repeatedly against Reformers of all descriptions, whether they would reform the House of Commons, or abolish the Kingly Government.

I should humbly think, that the few words I have now used would be sufficient answer, either in a Court of Justice, or before a Tribunal of Critics, as to the true meaning of this passage. But this answer will not satisfy those, who question the principles contained in this or in other parts of the Letter; and for *their* satisfaction

tisfaction, I am ready to enter into a full exposition of those principles; to shew the grounds upon which they stand, and the sources whence they are derived.

My way of thinking upon the nature of Our Constitution, perhaps differs from that of many, who talk upon this interesting subject; for indeed who does not talk upon it? This difference probably arises from a difference of Study, which gives a predilection for different authorities upon which to rely as guides for forming Opinions and Sentiments. It has so happened, that I have been conversant with Law Books, and I have some acquaintance with the Records of Our Courts, and of Parliament; I have not been contented with things that appear only on the surface, and are seen daily; but I have dug down to their root; I have looked back to the Origin of Our Laws and Government in early times, and I have endeavoured to trace the progress of their improvement, thro' various vicissitudes, to the present day. I thought this the only true way of obtaining, what is called, constitutional knowledge;—It was studying the Constitution in the History which itself had written for our Instruction—its own Acts

Acts delivered down to us, in its own language; a Character stamped upon the Records of the Law, and impressed on the Memorials of Our Usages and Customs.

A mind, that has been habituated to this sort of pursuit, must possess Principles and Opinions, and be trained to a turn of thinking upon the Constitution, and Government of this Kingdom, which are, perhaps, different from the discipline, and systems of other Schools; but which I thought myself safe, in considering as just, and even known to every body, and therefore fit, and proper to be reasoned upon, as the *jus commune*, that every one admitted to be solid and certain. It was not, till I had trusted my performance to the Public, that I discovered how much I had deceived myself in this Imagination. I found then, that there were other systems of the Constitution than the one I had formed for myself; that some Persons of Character for parts and learning were of a different School from mine; and that Persons might speak, with authority and weight, upon the Constitution, without going through the training which I had conceived to be necessary. Some of these,

C

who

who meant to be *candid*, admitted that my system might at one time have been the Law of the Land, but that the Constitution was now altered.

I own, I never was more astonished in my life, than when I heard these doubts, and cavils; but when I saw them carried to the unaccountable length of arraigning and censuring for libellous, malicious, and seditious, my poor pamphlet, that was written, I know, with the best disposition, and, as I thought, upon the best principles, I began to fear that either the public, or myself had lost our understandings. It appeared to me to be reconcilable to no Ideas of Justice or Common Sense, as a serious proceeding; and I know not how it is to be excused as a Jest, played off to elevate and surprize in a moment when such Relief was wanted. I leave this, like other Jests, to be enjoyed by those who make them; to me and my Friend it has been neither amusement, nor profit; it has been wholly serious, and as such I shall now be obliged to treat it.

To those who think differently from me on the nature of Our Government, I shall beg
leave

leave to address a detail of such Authorities taken from Law Writers, and proceedings of a juridical, or parliamentary nature, as will fully satisfy any reasonable person, I should think, that however wrong my Notions may be, they have at least some of the first names in the Law, both of ancient and modern times, for their justification. I shall accompany these with occasional observations, relative to the frame and nature of Our Constitution, and I hope, upon the whole, to prove beyond controversy, or doubt, that nothing has been advanced in my former Letter, but what is warranted by the best opinions of the best and ablest Men. What I shall trouble you with I shall divide into two parts :

1st. The Authorities to be found in Law Books, Records, and History, to shew that the general Idea of the frame and nature of the Constitution of Our Government, as expressed in various Parts of the Letter, are well founded.

2dly, A particular examination of the paragraph selected for prosecution, sentence by

sentence, to shew that it is consistent with the foregoing Authorities.

First; Of authorities to be found in Law Books, Records, and History.

It is a well known maxim, among Lawyers, that the *form of pleading* is evidence of the Law; that is, when the form of expression, which has been invariably used by pleaders in alleging any matter upon a Record, expresses or implies a certain position of Law, it is from thence collected, that such position has been as invariably holden to be law. His Majesty's present Attorney General (who was unfortunately employed to prosecute my pamphlet) brought the spirit of this maxim to his aid, and to the aid of the present Ministers on a famous occasion.

It is laid down by the present Attorney General in the Debates upon the Regency, more than once to this effect "As to the Constitution, and the Maxims on which it is founded, he considered that the *form* of the Constitution was the *substance* of the Constitution*".

* See Debrett's Debates, Vol. 25, Page 131.

This did not pass without notice, but was recurred to, in subsequent Debates, and the Doctrine was admitted by the Majority of the two Houses, who adopted a measure on that occasion, which had nothing but the forms of the Constitution to uphold it. I mean *the Commission under the Great Seal*, by which the Parliament was opened, and by which, it was intended afterwards to pass the Bill for appointing the Regency. The Great Seal, they said, was an Evidence of the Royal Will and Consent, against which there lay no averment in the Law; whatever was done under that *form* was well done, and according to the Law and Constitution.

I entirely agree in shewing this deference to the authority of *forms*. Forms, whether of expression, or of proceeding, must in the nature of them be subsequent to the things, to which they relate, and we may be sure, they were contrived as the best adapted to the nature of those things, as they then subsisted; when therefore the substance of those things, from any Cause, in a lapse of time, ceases to have all the appearance it once had, these forms are the next best evidence to shew, what is the true substance of those things; and I have no difficulty

difficulty in concluding, that the principles implied by any established form of expression, or proceeding, are true and genuine principles.

It cannot be believed, that any form should have been devised without a reality to suggest and require it, any more than that a shadow should exist without a substance.

It is plain that, in my former Letter, I have proceeded upon the same idea in stating what I considered as the Constitution. I have taken it up, as it appears in the *forms* of it—in Records of Parliament—in the Statute Book—and in other ancient documents.—The same sort of Documents, to which the Parliament recurred in the Case of the Regency, when they followed a precedent in the Rolls of Parliament of the time of Henry the VIth.

Continuing in the same persuasion, that this Criterion is the best, that can be applied for investigating the nature of Our Constitution, I now beg to examine the Doctrines and Principles contained in the Letter, and then compare them with such *forms* as I allude to. To these I shall add several authorities from writers of reputation, and eminence among Lawyers.

In

In my Letter, the King is considered as the supreme head of the Government, the functions of which he exercises by different advisers, assigned by the Law and Usage of the Realm, either in Parliament, or out of Parliament; which two functions may be denominated by two Terms, that have grown into fashion; *the Executive Power* of the King, and *the Legislative Power* of the King*.

As to the *Executive*, it is plain to every Common Observer, that the whole of that Power and Duty is placed in the King. He executes the Law, he is supposed to be present in some of the Courts, as in the King's Bench, and Chancery; all of them are the *King's* Courts, and every process runs in *His* name. The Command of the Army and Navy, as well as that of the Civil Force, is in his hands. *The King's Peace*, is the quiet of the Country. In short, no one doubts, but that the whole of the executive power is lodged in the King.

* I find these terms in common use; I shall hereafter give my reasons for disapproving them. Vid. post p. 175, and the note there.

Nor can there be more doubt, after a little Consideration, that the *legislative* is also residing fundamentally in the King. The two Houses of Parliament, consisting of the Lords and Commons, constitute one of the *Councils* with which the King consults on the arduous affairs of the nation. It is therefore in these two respects called *the Great Council of the Realm* — *His Parliament** — The supposition of Law is, that he is always present there; and all the dignity and pre-eminence ascribed to the Parliament are derived, as I take it, from the consideration of the King being at its head. We have seen during the trial of Mr. Hastings what reverence was shewn only to the *Cloth of Estate*, because it is the Throne where the King sits. The very liberty of speech, of which the Commons are justly so proud, is granted to them, at their prayer, on the opening of the Parliament, by the King; and so are the whole of their privileges.

The Parliament is also stiled the King's *Court of Parliament*; judgments there are sup-

* It is known to every Pleader, that wherever it is necessary to speak of the King, coupled with the Parliament, it must be pleaded as *his Parliament*.

Boroughs, have all been nominated, from time to time, by the King. This Right of nomination has not indeed been exercised since Charles the II^d's Reign, but it is still supposed by the better opinion to reside in the King, because no Law has taken it from him ; and those who question it, alledge no stronger objection to it, than the *Union with Scotland*, by which the number of Scotch Members was fixed at 45, and it is contended, that it would diminish the proportion that Kingdom is, by the Compact of Union, to hold in the legislature, if the King called upon any fresh English Boroughs to send Members.

Can therefore any thing be more peculiarly *his* than the Parliament, which owes its existence to the King? The frequency, and continuance of Parliaments, as we have them in our days, are wholly ascribable to the King's Choice ; he is not obliged by Law to hold a Parliament till within three Years after a prorogation, or dissolution.

It was therefore meant to say, and it is truly said, as I contend, that the King is the *supreme power* from which the whole of our Constitution

tion is derived, by which it is governed, and round which as a Centre it moves, and performs all its operations.

That he is the *Caput, Principium, et Finis*. That *with* him, we possess every thing, not only what is immediately a part of himself; but also, that which is not in every sense so, namely the *Commons* and *Juries*; for those are not brought into action but by his Writ, and at his call. That *without* the King we cannot have *them*, or any thing whatsoever civil or military. He is the *sine qua non* of the whole Constitution, and Government; not an accidental part, not an adjunct, not a thing that may or may not exist: But an Essence, a primary Cause, always in action; while Lords, and Commons, and Juries, are at intervals unemployed and dormant, being in their nature only occasional and temporary.

This is the sum of what was meant to be said. The whole of which can be substantiated by authorities; and if there is any thing in the expression of these Opinions, that to more fastidious persons may seem exceptionable, I think there are Authorities even in favour of

the Expressions : such authorities, I mean, as entitle me not to be thought more culpable than others, who, being full of their argument have run into metaphorical expressions, which, if taken as captiously as mine, are liable to full as ill a Construction.

Having thus explained a little more at large the Theory of the Constitution contained in my Letter, and having avowed my unaltered sentiments, as to it's Justness and Truth ; I shall proceed to lay before the Reader, more particularly, the express, and plain authorities for my maintaining these sentiments ; and from thence it will appear, I trust, that I maintain nothing more than has been taught by others, to whom all persons of reading bow with respect. In citing these authorities, I am afraid I shall be thought rather copious and perhaps tedious, but after what has passed upon the subject of my Letter, I hope I shall be excused in thus going into a detail, which is not a voluntary act in me, but has been made necessary by the Clamour and Calumnies of others. When I penned my Letter I added no authorities, because I thought nobody was without that information, which I was con-

scious

scious might be possessed by any body. Those Gentlemen, who would not take my hints, oblige me now to read them a Lecture; and *they* have no right to complain; though I may.

I shall begin these Authorities by a passage from Lord Hale; a Judge famous for his Learning in the Law, and known all his Life for an inclination favourable to the Liberty of the subject. This Author in his *Analysis*, a Work esteemed as authority by all Lawyers, and that on which Blackstone planned the method of his Commentaries, lays it down, " That the King is by the Law the head of the Kingdom and People."*

" He is a sole Corporation of more transcendant Nature and Constitution than other Corporations." Again " The great Concerns of Government requiring a great assistance to the King's natural Capacity, the Laws and Customs of the Kingdom have furnished him with divers assisting Councils, which are of two kinds, viz,

" His ordinary Councils.

" His extraordinary Councils.

* P. 4.

" His

“ His ordinary Councils are three, viz.

“ *Privatum Concilium*, his Privy Council.

“ *Legale Concilium*, or his Council at Law,
“ which consisteth of the Lord Chancellor,
“ Lord Treasurer, Lord Privy Seal, Judges
“ of both Benches, Barons of the Exchequer,
“ Master of the Rolls, &c. &c. who are the
“ King’s Council of Advice in Matters of
“ Law.

“ *Concilium Militare*, his Council in time of
“ War, or public hostility, viz.

“ In matters at Land, the Earl Constable,
“ and Earl Marshall.

“ In matters at Sea, the Lord Admiral.”

“ The King’s *Extraordinary Councils* are of
“ two kinds :

“ Secular, or temporal ;

“ Ecclesiastical, or spiritual.

“ The King’s extraordinary secular Councils
“ are, *The House of Peers ; The House of Commons ;*
“ in their capacity of informing, advising, and
“ counselling the King in matters that are
“ Public Benefits.

“ Public Grievances.

“ The

“ The extraordinary ecclesiastical Councils
“ are, The upper and lower House of Convo-
“ cation.”*

In the 6th Section where Lord Hale enumerates the “ *Jura summæ Majestatis, or Rights of the King’s Empire or Dominion,*” Among others, he places, what he calls, “ *his Right in relation to the Laws,*” and goes on thus :

“ As to the making Laws, his right consists in three particulars.”

“ In the making of Statute Laws, or Acts of Parliament, for though the King cannot make such Laws himself, without the Consent of both Houses of Parliament ; yet no Law can be made to bind the subject without him.”

He then goes on to state in like manner, his Power of making Canons with the Consent of the Convocation.

Thus far Lord Hale ; The form of the Writ of summons to Parliament plainly conveys, in what relation the two Houses stand towards the King in his Parliament.

* P. 6. Sect. v.

That

That the design of this summons to Parliament may be better seen, I will state the Writ at length as it is to be found in *Lord Coke's Fourth Institute*.

“ *Rex Vice-comiti salutem, quod nos de
 “ avisamento et assensu consilii nostri pro qui-
 “ busdam arduis et urgentibus negotiis nos,
 “ statum, et defensionem regni nostri Angliæ,
 “ et ecclesiæ Anglicanæ concernentibus quod-
 “ dam Parliamentum nostrum apud, &c.
 “ teneri ordinaverimus, et ibidem cum prelati-
 “ magnatibus et proceribus regni dicti nostri,
 “ colloquium habere et tractatum; ipsi vice
 “ Comiti Norst. precipimus firmiter injun-
 “ gendo quod, factâ Proclamatione, in
 “ proximo comitatu tuo, post receptionem
 “ ejusdem brevis, duos Milites gladiis cinctos,
 “ &c. Eligi facias * AD FACIENDUM, ET*

* In the present form of English Writs, these words, *ad faciendum et consentiendum*, are translated *to do, and consent*. And *Whitelocke*, in his Comment on these words, says, “ each Member may complain of any public or private greivance, and propound remedies. He may present petitions for others, or offer Bills for repealing, or altering old Laws, or for making new ones.” 2 vol. p. 181.

CONSEN-

“ CONSENTIENDUM *his, quæ tunc ibidem*
 “ *de communi consilio nostro Angliæ (favente*
 “ *Deo) contingerent ordinari super negotiis*
 “ *antedictis, ita quod pro defectu potestatis*
 “ *hujusmodi seu propter improvidam electionem*
 “ *Militum Civium et Burgensium predicta*
 “ *negotia nostra infecta non remanerent*
 “ *quovismodo.*” 4 Inst. 9,

From this Writ to the Sheriff for electing Knights, Citizens, and Burgeffes, it appears, that they are summoned on the King's Business, *negotia nostra*,* and that they are called not to enact Laws, but to prefer complaints, and give their assent, *ad faciendum et consentiendum*.

So late as the reign of King William, when he, on the 25th of January, 1693, refused, as it is commonly termed, *to give his assent* to a Bill; this refusal was taken up very warmly by both Houses, and was made the subject of a representation to the King; but in this representation the Commons did not presume to state

* In the Copy of the Writ, on which *Whitelocke* comments, I see, it is *negotia antedicta*, not *negotia nostra*.

their disappointment higher than this, namely, "that their *Advice and Counsel* was not taken "by the King, as they hoped and expected it "would, for the good of the Kingdom." After complaining that his Majesty had refused to pass several Bills, they go on thus: "They "can impute it to no other cause than the "insinuations of particular persons, who take "upon them for their own particular ends, to "advise your Majesty, contrary to the *advice* "of Your Parliament."

And in conclusion: "They humbly pray, "that for the future, Your Majesty would be "graciously pleased, to hearken to the *advice* "of Your Parliament, and not to the secret "*advice* of particular persons, who may have "private Interests of theirs, separate from the "true Interest of Your Majesty, and Your "people*." Did a Parliament, who held this language, presume to call themselves Law-makers? most assuredly not.

* Hatfel's Precedents, vol. 2. Title, King's Assent to Bills.

The form of Statutes made in every session of Parliament, imports that they are the Acts of the King granted at the prayer of the Lords and Commons. “ *May it please Your Majesty, that it may be enacted, and be it enacted by the King’s most excellent Majesty, by and with the advice and Consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled*”

Even in Money Bills, where the Commons are apparently the sole and exclusive Grantors, after they have voluntarily granted their money, they address his Majesty in a manner more particularly respectful and humble, that he will be pleased to make it a Law. “ *We Your Majesty’s most DUTIFUL and LOYAL SUBJECTS, the Commons of Great Britain, in Parliament assembled, having, &c. &c. Do BESEECH Your Majesty that it may be enacted, and be it enacted by his Majesty, by and with the advice and Consent, &c. &c.*” In such humble wise do the Commons pray his Majesty to make a Law for receiving from them their own free Gifts.

Parliament itself has recently given a very clear proof of their sentiments upon this head. It seems, as if they were strongly impressed, that there existed no other constitutional way of forming a Legislature, in any part of the King's Dominions, than by lodging the efficient legislative power, and function in *the King*; and when that was done, they might limit it, by requiring the assent of those who are to form the legislative Council, and who, as such, are to advise therein. In framing the New Constitution for Upper and Lower Canada, as was done by Stat. 31, Geo. III. ch. xxxi. —the Parliament enacts, “ That there shall “ be within each of the said provinces respectively a *legislative Council*, and an *Assembly*, to “ be composed, and constituted in the manner “ hereinafter described; and that, in each of the “ said provinces respectively, *his Majesty*, his “ Heirs, and Successors, shall have power (by “ *and with the advice and Consent of the legislative “ Council and Assembly*, of such provinces respectively) *to make Laws*, for the peace, welfare, and good Government thereof.”

This Act was made in consequence of a Bill brought into the last Parliament by Lord Grenville,

ville, and it may be considered at once as a Parliamentary and a Ministerial authority; it has the authority at least of one of the Ministers, who is known to be a sound Lawyer, and too able a politician not to proceed according to the forms of Law.

From all these examples of precedent, it should seem, that no one ought to doubt whether the King was the active and efficient cause that operated in the making of Laws for the Kingdom. It seems to be one of those plain things known, however, only by established practice, for which it is not easy to find an express authority in Terms. It is like the doctrine, *that the eldest son succeeds the father in real property*, of which it is remarked, that though our Law proceeds upon it, and no one doubts it, there is yet no express Book authority for such a position.

But it happens there is express Book-authority to warrant our present position of the King's legislative authority, drawn from a source that cannot be questioned in a Court of Law, however new or repulsive it may sound to those who are not Lawyers. For the information
of

of such, I will beg to premise, that the *Year Books* are the oldest Reports in the Law ; that they are held as fit to be alleged in Our Courts, as the Reports of last Term ; and further, that the Lawyers, and the Year Books of Edward the III^d's reign have always been held in the highest estimation. After this introduction I beg you to read what is laid down in 22^d Edward III^d. Hilary Term, plea 25, where you will find in Law-French, these words : *Et fuit dit, que le Roy fist les leis, par assent des peres, et de la Commune, et non pas les peres, et la Commune.* Here is express authority to shew that it is not the two Houses who make the Law, but the King.

To this authority from the Year Books, which is more than I could have expected upon such a subject, I will subjoin two passages from *Sir Bulstrode Whitlock*. In two different parts of his famous commentary on the Parliamentary Writ, he gives these definitions of a Statute. " The making of Statutes is by the King with
" the assent of the Lords and Commons in Par-
" liament*." Again thus : " Statutes are Acts
" of Our Parliament; the Laws made by the

* Vol. I, 406.

" King

“ King, with the assent of *his* Lords and Commons in Parliament assembled *.” To these I may add, though not a Law authority, yet a great one with many writers, and with none more than with Mr. Locke; the following are the words of the judicious Hooker. “ In devising and discussing of Laws, Wisdom especially is required ; but that which establisheth them, and maketh them, is power, even power of Dominion ; the chieftly whereof amongst us, resteth in the person of the King †.”

In short, it is the business of the Houses to prepare Bills for the King's approbation. If the King approves, he puts his mark of sanction upon them, in an authoritative but short declaration, *Le Roy le veut*, he wills it. But we have seen the language of the Commons is, *they pray it may be enacted*. And here I cannot help referring to a passage during the time of Cromwell's Usurpation, which shews that the *form* of words, in which the assent is given to Bills, was deemed to be of essential importance by the makers of Constitutions in those times. In Cromwell's Parliament in October, 1656,

* Vol. 1, 399]

† Eccl. Pol. vol. 3, p. 347.

a Committee was appointed to consider of the way of address to his Highness with Bills; and that Committee reported, that when Bills were presented to his Highness, and he passed them, the form of words used should be, "*The Lord Protector doth CONSENT* *," and we afterwards find † that the Protector signified his Consent to certain Bills in these words, "*We do consent.*"

This was the form in a mongrel, non-descript Government, where there was no sovereign, Leige Lord, but a *Protector*, who held his Office by Commission, or sufferance, and who was in a sort of Co-ordination with the Parliament. How different the language of an English King!

It must be owned, the common expression of the *King's assent* misleads many men; and I am sorry to say, there are some, who talk, as if they thought the King was no more, in these matters, than Oliver Cromwell; or at best but a third party in a tripartite concern, who is necessary, to be sure, as one of the Parties, yet is very little above a Counter-signing officer, to give the final authority ‡.

* Parl. Hist. vol. 21, p. 30. † Ibid, p. 43 44.

‡ This incorrect manner of considering the Royal Authority, not as the essence, and fundamental, but as only a circumstance,

But a King of England is called by Lord Coke, who was a disgraced man when he wrote his fourth Institute, and was, in no part of his long life, a Court sycophant, the *Caput principium et finis* of the High Court of Parliament; and after what has already been said, the reader is ready enough to agree with him. His words are these “ Of this Court of Parliament the King is *Caput principium et finis*, “ and as in the natural body when all the “ sinews, being joined in the *head*, do join “ forces together for strengthening of the

cumstance, necessary indeed, but still a Circumstance only, in the affair of legislation, is countenanced and would, I dare say, be thought to be well defended by Parliamentary Authority. In the Stat. 13, Car. II. ch. 1. for the preservation of his Majesty's Person, and Government, against treasonable and seditious practices and attempts, the penalties of a premunire are inflicted on persons, who affirm, that both Houses of Parliament, have, or hath a legislative Power without the King. If this should be so construed as to imply that the Houses were to be considered as the principal in the making of Laws, it may be said in answer, that this provision was made necessary by the usurpations of the late times; that it is worded so as to obviate any return of the disorders and mischievous opinions that had lately prevailed; in short, it is a penal restriction of a special nature, and not meant as a correct description of the Legislature.

F

“ body

“ body, there is *ultimum potentiae*, so in the
 “ Politic Body, when the King, and the Lords
 “ spiritual and temporal, Knights, Citizens,
 “ and Burgeffes are all by the King’s Com-
 “ mand, assorted and joined together under the
 “ head in Consultation for the common good of
 “ the whole Realm, there is *ultimum sapien-*
 “ *tiae*.*”

This is the political Character given of an
 English King by *Lord Coke*; to which I will
 add the sentiments of a learned Judge, whose
 opinions have always had great weight with
 Lawyers: a person who has written in de-
 fence of what was done at the time of the ab-
 dication of King James, and who was a known
 advocate for the Liberty of the subject.

Sir Michael Foster, speaking of a King *de*
Jure and *de facto*, and contending that alle-
 giance is due by the subject to the latter as
 well as to the former, goes on as follows;
 “ He (that is, the subject) hopeth for protec-
 “ tion from the Crown, and he payeth his
 “ allegiance *to it*, in the *Person* of him, whom
 “ he seeth in the full and peaceable possession
 “ of it; he entereth not into the question of

* 4 Inst. 3.

“ Title, he hath neither leifure nor abilities,
 “ nor is he at liberty to enter into that quef-
 “ tion; but he feeth *the fountain from whence*
 “ *the blessings of Government, liberty, peace, and*
 “ *plenty flow* to him, and there he payeth his
 “ allegiance*.”

By the ftrong words, *The fountain from whence the blessings of Government, liberty, peace, and plenty flow*, what can be meant lefs than the legiflative, as well as the executive power?

In a Tract of the famous *Lord Hale*, juft published by Mr. Hargrave, on the Judicature of the Houfe of Lords, there are feveral paffages, which fhew what was the opinion of that eminent Lawyer on the Conftitution of the Legiflature. In every inftance he confiders the legiflative as lodged in the King; where he is maintaining, that the two Houfes are *the Eftates* of the Realm, and that the King is not one of them, but above them, he has thefe words.
 “ The Nobility, Clergy, and Commonality
 “ are thefe three Eftates of the Kingdom.
 “ The King comes in upon a higher denomi-
 “ nation and title; namely, *the head of thefe*
 “ *three Eftates*. And therefore (he adds) they

* Foster's Rep. 2d edit. p. 399.

“ who have gone about to make the King one
 “ of the three Estates, are mistaken, as will
 “ easily appear to any one, who will read the
 “ Records fully *.”

Lord Coke before him had begun his Chapter on the high Court of Parliament in these words. “ This Court consisteth of
 “ the King’s Majesty, sitting there, as in his
 “ royal political Capacity, and of the three
 “ Estates of the Realm †.”

Indeed there is parliamentary authority for this language; in Stat. 1 Eliz. c. 2 sect. 2, there are these words, “ We your loving, faithful,
 “ and obedient subjects, representing the *three*
 “ *Estates of Your Realm of England.*”

Again in the Bill of Rights ‡ “ The Lords
 “ Spiritual and Temporal and Commons as-
 “ sembled at Westminster, lawfully, fully, and
 “ freely representing *all the Estates of the people*
 “ *of this Realm;*” In short, this language is known to every school boy, who reads his Common Prayer Book; for there we find a

* Hale’s Judicature of the Lords, published by Mr. Hargrave, page 10.

† 4 Inst. ch. 1.

‡ Stat. 1. W. and M. S. 2, C. 2.

form of Prayer with Thanksgiving to be used yearly, on the 5th of November, for the happy deliverance of King James I. and the *three estates of England*, and also for the happy arrival of King William on that day. But how should this be known to persons, who commemorate the Revolution only at Tavern dinners !

The language of Our Statutes, and the Doctrine contended for by Lord Hale, are nothing more than is required by the Theory of all the Gothic Monarchies established in Europe. The various *orders* of Persons called together by the Monarch for Council and Advice in all those Monarchies, have borne the name of *The States* of the Kingdom ; Hence the Three Estates of France, the Clergy, Nobility, and *third Estate*, constituting the *Etats Generaux* of the Kingdom, and corresponding exactly with our three Estates of Lords Spiritual, Lords Temporal, and Commons ; hence the Estates of the German Empire, and those of Sweden and Denmark ; all of them possessing constitutions fundamentally similar and analogous to our own ; the particular modes of which, it would be superfluous here to enumerate. It is plain enough, from one single authority
of

of a German Publicist, that the Monarch was never considered as one of the Estates, but the Person at their head. Thus Pütter* calls the German Empire *Regnum statibus circumscriptum*; A monarchical Form of Government, circumscribed and restrained by the necessary consent of the Estates. *Proceres isti, quatenus a regibus eos in concilium vocari invaluit, ORDINES seu STATUS IMPERII sunt, Eorumque consensus (quæ est MONARCHIÆ RESTRICTÆ indoles) in regimine imperii adhibendus in necessitatem abiit, nisi qua imperatori reservata sint jura, quæ citra consensum adhuc solus exercet †.*

In Lord Hale's Tract before quoted, he says: "The legislative Power being lodged in
 " *the King* with the assent of the two Houses
 " of Parliament as such, and not with the
 " assent of the three Estates simply considered
 " as such, *for it is the settled constitution and*
 " *Custom of the Kingdom that fixeth, and defineth,*

* Instit. Juris publici Germ. ch. 3.

† Pütter goes on thus, "*Quæ tamen omnia non sustulerunt formulam Imperii Monarchicam, quandoquidem rectè Monarchiæ distinguuntur in absolutas et restrictas, et, qui in hisce sufficit, adhuc superest Monarchiæ character in personæ Imperatoris Independentiâ et Majestât;*" which are very good English Ideas upon the nature of Monarchy.

" *where*

“ where the legislative Power is lodged, not
 “ notions and fancies.”* And further on, he
 maintains, that the essence of our Govern-
 ment, is the monarchy; these are his words,
 “ Although the English Monarchy, is not
 “ in all Respects absolute and unlimited,
 “ but hath certain qualifications of Monar-
 “ chical Power, especially in point of making Laws,
 “ and imposing Taxes upon the People; yet
 “ certainly, since the denomination of Go-
 “ vernment is *ad plurimum*, the Government
 “ is *monarchical*, and not aristocratical, or de-
 “ mocratical; and hence it is, that all Ju-
 “ risdiction in this Realm, whether ecclesia-
 “ stical, or civil, is derived from the Crown;
 “ and that the exercise thereof in the Mi-
 “ nisters, or Judges, to whom it is so dele-
 “ gated by the Crown, is in right of the
 “ Crown, and by Virtue of a delegation from
 “ it †.”

Again, where he is arguing against an ori-
 ginal Judicature in the House of Lords, in-
 dependent of some authority or Commission
 from the King, he has these words. “ The
 “ truth is, it is utterly inconsistent with the
 “ very frame of a Government, that the su-

* Ibid. pa. 11.

† Ibid pa. 190.

“ *preme*

" *preme power of making Laws should be in the*
 " *King with the advice of both his Houses of Par-*
 " *liament, and Judgment should be in one of*
 " *the Houses, without the King, and the*
 " *other; A supreme power of making Laws,*
 " *should be thus in the King, and Monarchical;*
 " *and the supreme decisive Power or Juris-*
 " *diction and dernier resort should be radically*
 " *in the Lords, and so aristocratical. There-*
 " *fore he considers, it is not only true de facto,*
 " *in our Government, but it is most necessary,*
 " *that the supreme decisive Power, or Jurisdic-*
 " *tion, and the dernier resort must be where*
 " *the legislative power is*.*" Which passage is
 very deserving of notice, not only as it shews that
 the legislative Power was, in *Lord Hale's* concep-
 tion, so acknowledged by every body to be lodged
 in the King, that he might adduce it as a topic of
 argument not to be questioned; but also as it
 shews a constitutional Opinion of his, that the
 interpretation of Laws ought to be lodged
 in the same hands as the making of them;
 and, that the *supreme Power* in a state is defec-
 tive, unless it comprehends in it both those
 Jurisdictions. From hence it seems, that, as
 he concludes from the King having the Le-

* Ibid. page 207.

gislative,

gislative, the Lords could not possess the Judicative Power radically in them, *we* are equally intitled to conclude, the two Houses of Parliament, not having the Judicative Power in them radically, cannot have the legislative; for these supreme Jurisdictions must, according to *Lord Hale's* notion of our Constitution, reside in the same hands, namely, the Monarch, from whom alone they can be derived to others; or as it is more fully expressed by *Lord Hale*, in a former part of the same Tract † where he is speaking of the *deliberative and executive* parts of Civil Government, “ in both which, though
 “ the King, under God, be the supreme Governor and Fountain, yet, it is necessary
 “ for him to call in others in *partem sollicitudinis*, and as to use their assistance in the
 “ *executive* part, so to have their advice and
 “ council in the *deliberative* part of his Government.” In which words it appears he considered the Houses, as only assistants to the King in making Laws. In later times, we find *Lord Chief Baron Comyns*, when speaking of the King's Prerogatives, which regard times of peace, laying down, what he intitles “ The
 “ Prerogative of *enacting Laws*. †”

* Page 4.

† Digest Prerog. D, 1.

This position of the King's *Legislative Power*, confirmed by so many authorities, will be further elucidated by a retrospect to the juridical History of Acts of Parliament. Acts of Parliament used to arise from a Petition presented by the Commons (if the Bill commenced in that House) upon which the King after the assent of the Lords, signified his approbation by the words, *Le Roy le veut*. From this Petition with the approbation and confirmation of the King, the act was drawn up and entered on the Statute Roll of Parliament. But inconvenience was found in leaving Acts to be made in this way by the Judges, or perhaps only by the Clerks of Parliament, and an alteration took place, which is mentioned by *Lord Hale*, in the following words.

“ Of latter times, especially towards the
 “ latter end of Henry the VIth, and so down-
 “ wards, Acts of Parliament were drawn up
 “ in their full form, and so sent to the other
 “ House, or to the King sometimes in the
 “ following form, when it came from the
 “ Commons; *Item quædam Petitio deliberata*
 “ *fuit, &c. formam Actûs in se continens, vide-*
 “ *licet*. And this avoided many great in-
 “ conveniencies

“conveniencies and uncertainties, which the
“course, antiently used, had occasioned.

“In the elder times down so low as Henry
“VIth, the petitions of the Commons did not
“contain the formality of Acts; but after the
“conclusion of the Parliament, the Judges
“principally were employed, out of the peti-
“tion and the King’s Answer to draw out a
“formal Act.”*

Some few years before this, the Commons
had complained, that the Rolls of Parliament

* Judicature of the Lords, page 62.

Should these opinions of Lord Hale be thought equally
exceptionable with those, which they are adduced to justify,
it will be easy, and, perhaps, the duty of the Attorney
General, after what has happened, to bring them in question,
by prosecuting Mr. Hargrave for publishing this old Tract.
Mr. H. seems more culpable than I was. There was some
excuse for my publishing what I had so good authorities,
independent of these from *Lord Hale*, to warrant. But
what is to be said for Mr. Hargrave, who has published this
Tract after it had laid by him for seven years unpublished,
and after, and seemingly in defiance of, the violent condem-
nation, which such positions have received from persons, who
ought to understand these matters? If the Attorney General
will not proceed against him for publishing this, I wish he
could devise some process for compelling him to publish others
equally valuable.

were made very different from the intention expressed in the petitions of the Commons. When such complaint was made in 8th Henry IV. it was enacted, in order to redress this irregularity, that certain of the Commons House should be present at the engrossing of the Parliament Roll. This provision, however, does not seem to have remedied the evil; for in 2d year of Henry Vth, the Commons again remonstrated, and contended, "that considering they were as well *assentors*, as *petitioners*, Statutes should be made according to "the Tenor of the Writing of their Petition, "and not altered."

Previous to this, in the Reign of Henry IVth, the Commons had been told by the Archbishop of Canterbury, who then presided in the House of Peers, by the Command of the King, that the Commons in Parliament were *only petitioners**.

If the Commons were pronounced by the King in Parliament, in the time of Henry IVth, to be *only petitioners*; and, in 2d Henry Vth

* Parliam. Hist. vol. 2, p. 51, See Reeves's Hist. of the Law, vol. 3, p. 111, 227, 253, and the authorities there cited.
they

they themselves did not claim to be more than *assentors*, there seems to be the best authority in favour of the opinion, that by the Theory of our Law and Government there is no radical right of making Laws in the Commons ; and, as nobody is disposed to contend that there was ever any such right in the Lords, where should it be vested but in the King ? so that *Lord Hale*, and others, whose opinions we have before seen, were fully justified in what they have laid down ; and the present language of Parliament, in the *form* of Statutes, which implies that it is *the King who enacts*, is in perfect unison with the constant opinions of Lawyers, and the antient practice of Parliament.

With all these authorities, and such long usage on one side, it is to be wondered how notions of a different sort first began to prevail. It is well known that in the reign of Queen Elizabeth, there began to shew itself in the House of Commons, a spirit of puritanism, that gained strength through the reign of James Ist, and in that of Charles Ist, till it succeeded in setting up the two Houses of Parliament against the King, and at last gave origin to the Rebellion of 1641. At that time new
notions

notions of Government were started and diffeminated. One of them was, that either of the two Houses, or at least both of them together, had *co-ordinate* authority with the King, in matters of legislation. That *they* were in effect the makers of the Law; that the King indeed gave his assent; but that he was bound to give it, and had no right to put a *veto* on a measure once agreed upon by both Houses, and to reject the Laws *quas vulgus elegerit*; that upon the whole, the Monarchy was a *mixt Monarchy*, and that the Lords and Commons were ingredients of equal quality with the King in the composition.

These Notions of Equality were the principal grounds of argument upon which the Parliamentarians justified their exercise of sovereign power, in levying Troops, and carrying on the War against the King, which ultimately led to destroying the whole of the Constitution. After such an application of it, we need not doubt that such an opinion is entirely anti-monarchical; and has a direct tendency to introduce a Republic; and that it will furnish a principle of Rebellion, whenever the times

times give a fair occasion for its being called into action.

This Idea of *Co-ordination* takes away all Relation of King, and subject, and every principle of derivation and dependence between the King and his two Houses. There is an end to, *his Majesty's dutiful and loving subjects, his faithful Commons in Parliament assembled.* It is incompatible for such a co-ordinate House to pray at the foot of the Throne, that, *the King would grant them freedom of speech, &c. &c.* It contributes to make the King in Parliament, and the King out of Parliament distinct persons. It makes the Parliament a distinct thing from the King, and not a Council, belonging to him. It sets up a divided, multiform supreme power, contrary both to Law and practice, which only acknowledge one, entire, supreme head of the Government, exercising its functions, sometimes in Parliament, sometimes in Council, at other times by the Ministers and Officers of its own appointment, and known to the Law; to which supreme authority every body is subject, and owes allegiance.

When

When Charles the II^d was restored, these republican notions of Co-ordination in legislation so far continued to prevail, that during the first session of the Convention Parliament, 12 Car. II, I observe, the formal part of the Acts of Parliament still preserved marks of this supposed Co-ordination in the Parliament; they are expressed to *be enacted by the King, the Lords, and the Commons*; but at the close of the first session, the old form was restored, and from thence to the present time it has been preserved uninterruptedly, I believe, without any one deviation.

Indeed it cannot be dissembled, that there was a variance in this formal enacting part of Statutes during the reign of James the First, and even before that time; which probably crept in either from clerical inaccuracy, or from some deep designs, the effect of which were not observed by those who should have attended to such formalities. After the Restoration, when it had been discovered what dangerous notions were grounded upon the circumstance of degrading the King in his legislative capacity to a level with the two Houses, such forms of expression were regarded

ed by the zealous Friends of the Constitution with more attention ; and to this, no doubt, we may ascribe the uniformity with which the *enacting* words of Statutes have been preserved, from that time to the present.

This mischievous notion of Co-ordination between the King, and his Lords and Commons probably grew out of the mistake of *three Estates* so reprobated by *Lord Hale* ; and these were worked up together into the Theory of a *mixt Monarchy*, which grew fashionable in those times*. The principles of this Theory were countenanced and helped on by the familiar use of a metaphorical expression, that began to be applied to the Parliament in the reign of Charles the First. They used to speak of the *three branches of the Legislature*, reckoning the King as one, and the Lords and Commons as the other two. The Friends of King Charles had been so incautious as to use this expression in some of their addresses and public papers; and *Lord Clarendon*† tells us, that he remonstrated with *Lord Faulkland* for giving currency to this new and unconstitutional Term. We have before seen the notion of three Estates censured by *Lord*

* This theory is the subject of Dr. Hunton's book, on *Mixt Monarchy*.

† *Clarendon's Life*, vol. I. p. 131.

Hale; *Lord Clarendon* passes a like sentence on the three branches; I am sorry, after such authorities, these Expressions should still be favourites with some persons; and it is remarkable that the worst of the two has the most currency. The *three branches* is not only unsound in point of Law, but it is wholly false as a metaphor; nobody talks of branches, but relatively to something else; if you speak of branches of a Canal, you always have in your mind *The grand Trunk*; but if King, Lords and Commons are three branches, where is the Trunk? and yet many who commit this blunder against both Law and Rhetoric, make no conscience of quarrelling with my metaphor of two branches, which I shall soon shew to be correct in both. My Metaphor, and the notions that belong to it may possibly contribute to enlighten the Minds of some, and lead them to comprehend the nature, and distinguish the properties of our Constitution as by Law established, and thereby may help to fix our Monarchy, more firmly than ever. The Metaphor of three branches, with the conceits belonging to it, contributed first to debase and weaken the Monarchy, and finally to destroy it. These three-branch-Men will allow me to
 laugh

laugh at their airy conceit, without stock or trunk, supported by nothing; they were the principal persecutors of my two branches, and seemed jealous and angry, that any nonsense, but their own, should get possession of the public; they are welcome to be angry, a common resource of those who are in the wrong.

After the mischievous consequences of these notions had been experienced, considerate men grew to be more upon their guard, as to expressions, no less than * opinions; and it is owing to this, I believe, that the Monarchy has since been much better understood, and more cherished than it ever was before the grand Rebellion. I believe, the steadiness and temper observed at the abdication of James the II. and the caution, with which the wise

* This experience had suggested the following provision in Stat. 12 Car. II. 30 for the attainder of the Regicides; it is there declared, that by the undoubted and fundamental Laws of this Kingdom, neither the Peers of this Realm, nor the Commons, nor both together in Parliament, nor the people collectively, nor representatively, nor any other Persons whatsoever, ever had, have, have, or ought to have any coercive power over the *persons* of the Kings of this Realm. This is, surely, somewhat of a bar to the *sovereign Will* of the People!

and temperate Conductors in that dangerous Crisis, guarded against any diminution of the Monarchy (while the Monarch had abdicated) are to be ascribed to the improvements and advances in political knowledge derived from the recent experience *. In my opinion, there is no period more truly monarchical, than that between the abdication of King James, and the confirmation of King William on the Throne ; and as it is a fashion to talk of Revolution principles in the general, without specifying what is exactly meant by them, I will, as far as I am concerned, be explicit ; and I here profess my Opinion, that, to my understanding, the principles most discernible in the Conductors of the Revolution, are those of preserving the antient hereditary Monarchy of this Realm, with its Laws and Government. Those I think, are true *Revolution Principles*.

* The proposition that the sovereignty of this Realm is in three Estates, viz. in the King, Lords and Commons, was condemned by a Decree of the University of Oxford in the year 1683, and Dr. Hunton's Book upon mixt Monarchy, in which it was contained, was ordered to be burnt; which was accordingly done in the quadrangle of the Schools. My two branches werethreatened with the same fate! Ridiculous! —but we laugh at the follies that are past, little thinking what are to come.

I think

I think I have already adduced authorities fully sufficient to warrant a plain man in hazarding the position, that by the Law, and Constitution of the Realm, the supreme Power is lodged in the King, both to *make* and to *execute* the Laws. But we live in times when things of this nature are brought to a new sort of Test; when established authorities are as much questioned, as the matter they are vouched to warrant. Books and authors become antiquated; *Coke* and *Hale*, are deemed authorities in Law, but not on the Constitution; a distinction is made between Writers before and since the Revolution; some believe the Constitution we possess now, to be different from that which existed, when *Coke* and *Hale* wrote, and the other authorities here mentioned had their origin; and some, who do not admit such change, are disposed, however, to admit, that the old Constitution is not quite suited to the present fashion of thinking, and, therefore, that it is not *prudent*, to insist upon its true nature, and to expose it to cavil and controversy.

I know there are persons of all these descriptions; but I hope they are very few, and I trust that a little more discussion on this interesting

resting subject will bring all these persons to way of thinking, and of acting, more worthy of themselves and of true Englishmen. As an incitement to these persons to take more courage, and bestow a little more pains in forming their own conceptions; but more especially, as an apology for my having advanced, what is said not to be now *Law*, or not *prudent*, in the present times, to be written, or published, I beg leave to add a Law authority which every one will consider as high as any that has gone before, but which I must consider as more valuable to me, than all the others put together, because it justifies me both in point of *Law* and of *prudence* in stating, in these *ticklish times*, the just and constitutional authority of the Monarch, as high as I have done. The learned person alluded to, on a solemn occasion, in presence of a great and mixed auditory, consisting of persons learned and unlearned, well affected and disaffected to the Government, some of whom were professionally bound, and were of themselves inclined enough to question and cavil at unconstitutional doctrines, has openly stated the constitutional powers of the Crown full as high as I have done, and in a much more emphatic strain of description, with infinitely

mor

more circumstance and enlargement, to inforce his Theory, and to impress on the minds of his hearers, the immense pre-eminence, power, and authority conferred by the Constitution on an English King.

The person, to whom I allude, is his Majesty's present Attorney General, whose exertions in maturing and conducting the most arduous and most singular state prosecutions, by far, in our times, will be remembered to his honor, but never can be rewarded sufficiently. Upon that occasion, he had to state to the Jury the nature of the Kingly Office; and in doing this, he, perhaps, thought he had, among many other difficulties, to obviate some of the effects produced by the malignant Wisdom of the present enlightened times, which teaches every man to think much of himself, and very little of others; and especially to hold Kings but as common Men, who may be removed without impairing the frame of Society; it was, perhaps, owing to this peculiarity of the times, that he thought it more necessary, than on any common case of High Treason, to demonstrate, that by the Theory of our Constitution, *the supreme power* of the Government is so vested
in,

in, and dependent upon the King, that the functions of the State, through all its departments, are dependent upon his person ; and that an attempt upon his Life, so precious and necessary, is like an attempt upon the very existence of the Constitution itself.

He seems to have laboured this part of his opening in *Hardy's Case*, with great solicitude, and, I must say, with great justness and success. But my Commendations are suspicious and unnecessary. Instead of extolling the soundness of his doctrines, I shall confine myself to the single observation, that they coincide so exactly with those contained in my Letter, that one of them might very well be supposed to be copied from the other. He addresses the Jury in the following words. "*Gentlemen, the Power of the State, by which I mean the power of MAKING LAWS, and enforcing the execution of them when made, is VESTED IN THE KING;*"

I pause here merely to remind those Gentlemen, who took upon them the honourable employment of mangling my Letter in order to make a Libel out of half a sentence,
when

when they could not out of a whole one, that the Writings of others may be sported with in the same honest manner; the Attorney General goes on to qualify the above general position, much in the same manner in which I did.

“ *Enacting Laws in the one Case, that is in his*
 “ *legislative Character, by and with the advice and*
 “ *Consent of the Lords Spiritual and Temporal, and*
 “ *of the Commons in Parliament assembled, assembled*
 “ *according to Law, and the Constitutional Custom*
 “ *of England; in the other Case, executing the*
 “ *Laws, when made, in subservience to the Laws*
 “ *so made, and with the advice, which the Law*
 “ *and Constitution hath assigned to him in almost*
 “ *every instance, in which it has called upon him*
 “ *to act for the benefit of the subject.*”*

It appears from hence, that the Attorney General unites in opinion with the best Law-authorities of antient and modern date, to consider the King as Legislator *sub modo* for the Kingdom.

The Dignity and importance of the Regal Character, is set forth by the Attorney General in a subsequent passage. Having stated shortly the Royal Duties, he goes on thus; “ Gentlemen, to that King upon whom those Duties
 “ attach, the Law and Constitution, for the bet-

* Hardy's Trial by Gurney, vol. 1, p. 32, 33.

“ ter execution of them, have assigned various
 “ *Counsellors* and responsible *advisers*: it has
 “ clothed him, under various Constitutional
 “ checks and restrictions, with various attri-
 “ butes and prerogatives as necessary for the
 “ support and maintenance of the Civil Liber-
 “ ties of the People; it ascribes to him sove-
 “ reignty, *imperial dignity and perfection*; and
 “ because the Rule and Government, as esta-
 “ blished in this Kingdom, cannot exist *for a*
 “ *moment*, without a person filling that office,
 “ and able to execute all the Duties from time
 “ to time, which I have now stated, it ascribes
 “ to him also, that, he never ceases to exist. In
 “ foreign affairs the Delegate and Representa-
 “ tive of *his* people, he makes War and Peace,
 “ leagues and Treaties; in domestic Con-
 “ cerns, he has prerogatives as a constituent
 “ part* of the supreme Legislature; the prerog-
 “ ative of raising Fleets and Armies; he is
 “ the fountain of Justice, bound to adminis-
 “ ter it to his people, because it is due
 “ to them; the great Conservator of Public
 “ peace, bound to maintain and vindicate it;
 “ every where present, that these Duties may
 “ no where fail of being discharged; the foun-
 “ tain

* Perhaps, the expressions of—“ Constituent part, delegate,
 and Representative,” may be thought a little to derogate from
 “ the sovereignty, imperial dignity and perfection” above
 ascribed to the Crown.

" tain of Honor, Office, and Privilege; the
 " Arbiter of Domestic Commerce, the head
 " of the national Church",*

Again in concluding his sketch of the Constitution, he closes with these emphatic words:
 " Gentlemen, I hope I shall not be thought
 " to mispend your time in stating thus much,
 " because it appears to me, that the fact, that
 " such is the Character, that such are the Du-
 " ties, that such are the attributes and preroga-
 " tives of the King in this Country (all existing
 " for the protection, security, and happiness of
 " the people, in an established form of Govern-
 " ment,) accounts for the just anxiety, border-
 " ing upon Jealousy, with which the Law
 " watches over his person; accounts for the fact
 " that, in every Indictment, the compassing, or
 " imagining his destruction, or deposition, seems
 " to be considered as necessarily co-existing
 " with an intention to subvert the Rule and Go-
 " vernment established in the Country. It is a
 " purpose to destroy and depose him, in whom
 " *the supreme power, rule, and Government, under*
 " *constitutional checks, and limitations, is vested,*
 " *and by whom with consent and advice in some*
 " *Cases, and with advice in all Cases, the exercise*
 " *of this constitutional power is to be carried on.*"†

* Hardy's Trial, by Gurney, vol. 1, p. 35, 36.

† Ibid, p. 36,

Thus does the Attorney General close, as he begun, with insisting upon the King being possessed of the *supreme power to legislate*, and to execute his Laws when made, under the qualification of the *advice and consent* of those who are provided by the Law to counsel and advise him. He seems to consider this Doctrine, as the *Caput, principium, et finis* of all speculations on the frame and nature of our Constitution.

I think I have exhibited abundant authorities to justify my doctrine, that the King makes the Law; and those who have brought it in question, must appear now to every one to be ignorant of the first principles of our Constitution. It is to be hoped, after this, that it will be deemed prudent for persons, who come to speak on matters of such importance, to be a little correctly informed, before they set themselves in the Chair to condemn others.

But I have not yet done with these Gentlemen; there remains for them one more piece of disgrace, which they little expect. I shall shew now, that they have not only been ignorant, but criminal, and that *they* (and not I,) are the offenders against the Law. Instead of my being guilty of Libel, in maintaining that the King makes the Law, they have incurred the penalties of a premunire in denying it.

By one of the Acts of Settlement, Stat. 6, Ann. C. 7, Sect. 2, to which we owe the protestant succession in the House of Hanover, it is enacted that if any one shall, by preaching, teaching, or *advised speaking*, declare, maintain and affirm, that *the Kings* of this Realm (with and by the authority of Parliament) are not able *to make Laws* and Statutes, to limit and bind the Crown, and the descent, limitation, inheritance and Government thereof, he shall incur the danger and penalties of a premunire. If these Gentlemen denied the King's power *in toto*, they denied it in this Case, and so are within the Statute. I believe none of them went beyond *speaking* upon it (and I believe they will now think with me, that it was not *speaking advisedly*,) if they had put it into writing, it would, by the next provision of the Act, have been high Treason.

Here I might conclude this part of my inquiry, leaving my Adversaries to extricate themselves, as they can, from the premunire into which they have been plunged by their own temerity and ignorance. But I cannot refrain from adding a few considerations for their farther satisfaction. I know that some will still resist this Doctrine upon general principles, though they find themselves silenced by authorities, and by the particular usage of *Our* Constitution. They
may

may think it strange, that after the framing, the considering, and revising, which Bills undergo in the two Houses, not the Houses, but the King (who may be supposed to know nothing of them till they are presented to him for his approbation) should be said to be the maker. To such objection it may be answered, that till they come to the King they are only *Bills*, or proposed Drafts for Laws, of which it is true, the two houses are makers; but that it is the King, who makes them into *Laws*; of which, therefore, he alone is the maker.

But it may be farther submitted, whether the supreme power in the state has, in the nature of it, any other mode of exercising its function than this concise one, of a simple affirmative or negative.

This has been a usage not peculiar to this Country, but has prevailed in all the Monarchies, I believe; that were established in Europe, by the Gothic nations. Nay more; in the Roman Republic, Laws were made upon the same principle, and in exact analogy to this usage. Under the Roman Republic the people held the Sovereignty in their own hands, and actually, in person, made their own Laws, this being one of the highest exercises of the *Majestas populi Romani*. According to our Constitution, all Majesty

jefty is, for wife purposes, lodged only in the Crown; and the King exercises the supreme power, as the people did in Rome. Now a Law under the Republic was defined to be, " what the people constituted or commanded, upon the prayer of some magistrate."

The following Terms describe the nature of a Roman Law and the proceeding for making it. *Lex vocabatur, quam populus Romanus, superiore Magistratu rogante, constituebat**. *Lex est generale jussu Populi, rogante Magistratu. Lex rogatur, aut fertur. Ferre ad populum; unde ferre legem, rogare, Legislator dicitur; et populus dicitur juberet.* The Course was this; some Magistrate drew up the intended Law, according to his notion of the measure; this he submitted to the Senate, where it was discussed; after this, it was proposed to the people at the *Comitia*, in these words, *Velitis jubeatis, quirites, hoc, ita, uti dixi? ita vos, quirites, rogo.* This address was termed *rogare* or *ferre legem*. The people were then to express their approbation or rejection, *in toto*, without any alteration or debate, giving their suffrage, by writing on a Tablet two words; if to approve, *uti rogas*, if to reject, *antiqua probo* †.

* Heinec. Syntagma, vol. 1, page 36.

† Calvin, Lex. Jur. verb. *Ferre, Lex.*

† Hein: ibid.

From this examination, We see, that it is no other than the Doctrine of pure republicanism for the Sovereign Power in the State to make the Laws, tho' others have framed, devised and debated them: and persons who approve Roman principles of Government, have no right to cavil at our sovereign being considered as the maker of the Law. The similitude between the Roman Republic and our monarchy in this particular, is incontrovertible; our Monarch, invested with the *Majestas Regni Anglicani*, is said, in the exact sense, and almost in the very words, of the Roman Lawyers, *jubere*, or *constituere*; and I may add, for the consolation of my Adversaries, that the two Houses continue, notwithstanding my supposed attack upon their dignity, to be, on the principles of Roman Jurisprudence, and in the very term of the Roman Language, literally *Legislators*, who frame, and propound Laws to be approved, or rejected by the supreme power in the State; for a Legislator, we see, is originally and properly the framer, and propounder, and not the maker of a Law. The Practice of Republican Rome and Monarchical England coincide, and the reason of their coincidence is accounted for, on the principles of Legislation laid down in the passage before quoted from the judicious Hooker; namely, that Wisdom may devise and discuss Laws, but the making of them is an *Act of Power*, the power of Dominion.

The Theory, therefore, which I had conceived, is neither new in this Country, nor without warrant from the example of others, nor irreconcilable with general principles of legislation; and those who have perused what I have laid before them, cannot, I think, deny my authorities, or my Conclusions. But some even of these will it seems, deny the application of the whole to the present state of our Government; I have heard it said, that mine is a Picture of the Constitution in the Reign of James the I. but not in the Reign of George the III. I have not heard any reason alledged for supporting this singular notion, and, therefore, I have no particular topic to question or controvert. Such Objectors will allow me then to declare as generally, as they have, that such a Position seems to me wholly untenable and monstrous, as applied to the subject we are now upon.

That our Constitution is not precisely the same that it was in the Reign of Ja. I. I am the last man to deny; because it is one of the strongest persuasions I have, about its excellence, that it is capable of, and is continually receiving, improvements, either by the accession of new benefits, or by the attainment of new securities to protect original rights. Many of these have accrued since the time of James I. There

K

was

was the Petition of Right, which rather secured old Rights than gave new ones ; the abolition of the star Chamber was a new benefit ; the Habeas Corpus Act was a new benefit ; the Bill of Rights was rather a new security to old Rights, except in the circumstance of a protestant King ; the Statute of William for holding Parliaments within three years was a benefit ; the two sedition Bills, passed lately, are among the securities to protect our Liberty, not against Arbitrary Power from above (for there is none, nor danger of any) but against a dissolute licentiousness from below, that threatens to overturn the Constitution. All these, without enumerating others, were improvements in the Constitution, and nothing can be clearer, than that the Constitution is not now, in all its circumstances, though it is in substance, and in principle, the same that it was heretofore.

But this is nothing to our present purpose ; for these Gentlemen have not stated, nor can I discover or imagine any positive alteration in the *Constitution of Parliament*, which has varied the Constitutional relation and dependance that subsisted, from times much earlier than James I. between the King and his Parliament. I know it will be alledged that the House of Commons has, for the last Century, assumed to advise and interfere in state affairs ; and that their opinion

and

and inclinations must always be considered in every important measure set on foot by the Crown; I admit this to be so, and I profess myself one who am well content with this additional energy shewn by the House of Commons, because it conciliates the confidence of the people to the Government, it gives new strength to the Crown, and as it contributes to the co-operation of both, in all public measures, it makes the Constitution more efficient, and the benefits from it more regular and general.

But this new energy has only given an *influence* to the House, which it had not before, it has not altered the *quality* of its station; *that* remains precisely the same; to suppose the contrary is absurd. It might as well be said, that because a son grows taller, and stronger, and his father grows older and weaker, therefore the son is no longer the Son, and the Father no longer the Father, and the relation between them ceases. But the principles of Government, like those of Nature, are not to be changed by a change in unessential modifications; in such cases the identity of the distinct substances remains the same; and the evidences of it are discoverable in the *form*, in spite of all the disguises from adventitious colouring. This is so strongly impressed upon me, that I have no

scruple to maintain, that the constitutional relation and dependence of the House of Commons upon the Crown was precisely the same in the days of Henry VIII. of Queen Elizabeth, and in our own times; although in the first of these periods, *Montagu* was threatened with the loss of his head, if the King's Bill did not pass; in the second, Peter Wentworth's mouth was stopped by the Star-Chamber; and in our time, we are compelled to hear more than one person repeatedly vent seditious speeches there, which would not pass with impunity any where else.*

This alteration in favour of the freedom of discussion has grown up, not because the Constitution of Parliament is altered, but because other parts of the Constitution have been altered, either in Theory or Practice; there is no longer any Star-Chamber; the penal Laws are not rigorously enforced; the freedom of Speech, and the privileges of the Houses, are respected; but this does not make the King less, or, the Houses more, in their constitutional relation, than they were 300 years ago. It does not make them Co-ordinate with the King; nor reduce him to a mere third branch with them; he does not cease to be the Law-maker as before.

* I speak only of the printed Debates; I suppose they are not true.

These

These are the topics, which satisfy me, that if my sketch of the Parliament is a true representation for the age of James I. as these Gentlemen seem to concede, it is equally true in the present day; and they must shew me some reason, which has not yet been done, before they will induce me to alter my opinion. These objectors little thought, what authority I had for delineating the Government, in this precise form. I have already given them a companion from a modern hand. If my portraiture is of the age of James I. I beg to know, to which of our Kings Reigns they would refer the one drawn by his Majesty's Attorney General?

Those who make this sort of observation are misled, as it should seem, for want of discriminating between the Constitution itself, and the notions that are entertained of it by different Persons, and at different periods of time; and for want of distinguishing between the Constitution itself, and the practice of it. It should be considered, that the Constitution is *res constituta*, a thing that is ascertained and certain, and that no alteration can be made in it, but by Law, the time and manner of which is known. Whatever has not so been altered, must still, by the principles of Law, remain a part of the Constitution; yet it may happen, that some of
these

these parts may not be brought into activity ; but may be suffered to lie dormant, for various reasons ; either that circumstances have not called for their application, or that the application of them would be inconvenient and unsuitable ; or that Men's Minds are so changed, that the exercise of them would not be generally approved. Owing to such causes as these, several powers in the Constitution may remain in a sort of abeyance, and yet continue a part of it ; though persons who only judge of the Constitution by the practice of it, and by what they daily see, would pronounce these to be no part of it. But one, who would speak with accuracy, upon the nature of the Constitution, must look further than the mere practice of it ; he must examine the whole of the *Res Constituta* ; analyse it to the bottom, sift out the first Elements, of which it is composed, and discover the principles upon which they are put together ; and it is not till this process is finished, that he will be enabled to speak with precision even upon what is most obvious in the daily practice of it.

In the study of systems, which have prevailed for ages, we must learn a great deal that is out of use, before we can thoroughly understand what still continues. No Lawyer is qualified to discuss

cuss the points of real property now in daily practice, unless he has stored his Mind with principles derived from a practice long obsolete. The present practice of Our Law, either of real property, or of the Constitution, does not furnish the whole system of either; and principles can only be extracted from a comprehensive view of the whole system.

In all investigations into the nature and principles of the Constitution, the first thing to ascertain is the *Res Constituta*, and then to distinguish between that part of it which is *in actu*, in real practice; and that which is only *in potentia*, and lies dormant; respecting the latter, it is never a question of the Constitution, but of prudence and policy whether any part of it shall be brought into action, in the present times, and under the present Circumstances. I believe these distinctions, if attended to, would help to adjust many questions upon what is, and what is not the Constitution.

In my sketch of the Constitution, I have endeavoured to exhibit it, as it is now *in actu*, in real practice in the reign of George the third; but like the Lawyer in a question of real property, I have been driven to account for it upon principles, that must be sought for a little deeper,

deeper, than the practice; because I knew no other that could be depended on.

Before I proceed to apply, what I have already detailed, to an exposition and defence of the paragraph in my letter, that has been so much canvassed, I will trouble the reader with some few passages, which have passed in Parliament of late days, and which either contribute to throw some light on the doctrines for which I contend, or are otherwise favourable to my side of the question.

We all remember the Calamity of the King's illness, when the Parliament was called upon to consider of expedients to supply the defect, which then prevailed in the supreme power. If any thing could convince Men, of the true nature of the Regal Authority, surely that Event shewed it, in the plainest manner: The Parliament lost all its energy and character, because the King was not actively at its head.

Many topics were urged upon that occasion in the various debates of both Houses of Parliament that might be applied to the present question; but I shall confine myself to only two Citations; being such as more particularly suit the matter in hand.

Mr.

Mr. Burke, was, at that time, on the side of those, who contended for the intirety and undiminished power of the Monarchy, against those, who were for a Regency, fettered with certain restrictions in the exercise of the Royal prerogative; and persons on his side of the question imputed to those on the other, a disposition to Republicanism; They were proceeding, it was said, as if the two Houses were to elect the Monarch.

On one of these occasions Mr. *Burke* is reported to have used these emphatic words. “ For his own part, says Mr. B. he was perfectly satisfied with the Constitution as he found it; he wanted no alteration; but there were others who did; and who set little or no value on the wisdom, and integrity, and patriotism of our Ancestors, who struggled so gloriously in defence of the Right of an ungrateful Posterity. To argue upon principle, he considered himself as fully justified in asserting, that *Great Britain is governed by an hereditary Monarchy*; It was so by the written, and by the unwritten Law; it was so by the very essence of our excellent, our at present matchless Constitution, and Heaven forbid it should ever prove otherwise; It was our own Inheritance, it was our powerful Bar-

L rier,

“ rier, our strong rampart against the ambition
 “ of mankind; it held out an excellent Lesson
 “ to the most aspiring; It said, *Thus far shalt*
 “ *thou go, and no farther.* It sheltered the sub-
 “ ject from the tyranny of illegal Tribunals,
 “ bloody proscriptions, and all the long train of
 “ evils, attendant upon the distractions of ill-
 “ guided and unprincipled Republics*.”

This doctrine of Mr. Burke I most intirely approve. But if *England is governed by a Monarchy* what must I say to those, who declare that ours is a *Government by King, Lords, and Commons?* I have before expressed my sentiments upon the three-branch-men, I will now say a few words to the King—Lords—and Commons-men, which I take to be only another denomination of the same sect.

3 I profess myself one of those, who have used this expression, like other persons, with perfect persuasion that it was right and proper; but since I have looked a little farther into these matters, this expression has grown out of favour with me; and I am ready to own, that since the example has been set of excepting at my modes of speech, I have examined more nar-

* Debrett's debates, vol. 25, p. 126, 127. When these remarkable words were delivered, there had been no Republic, no Robespierre, no revolutionary Tribunal in France.

rowly the modes and figures in use with my adversaries, in order to try what better Title they had than mine, to credit and currency. The result has been, that I have condemned as unconstitutional, the *three Estates*, and *three branches of the Legislature*, taken in the vulgar sense of those Terms. I shall now proceed to state my exceptions to that of *King, Lords, and Commons*.

In the first place, I think it not wise to propose this as a description of our Constitution, if it were only for this reason, that it is composed of three Terms; and therefore containing a greater complication of Ideas, than can be comprehended by every man, who uses it. As, on this Account, the expression fails of informing those, who are disposed to receive information, so it fails as a test, when used by disaffected men, who pretend only to conformity. A man may declare himself for a Government in King, Lords, and Commons, and yet be unfriendly to each of them separately, and to every circumstance belonging to them, which makes the essence of the English Constitution. He may wish the King to be reduced as low as King Charles I. was; he may wish the House of Commons *reformed*, as it is called, till it is greater than the King and Lords; and yet such a man might carry on the deception of being a

Friend to a Government in King, Lords, and Commons. In such a case, it is no test, nor even a just description, unless we add the qualification, *as by Law established.*

Again, it is not, logically speaking, a correct description of the English Government. For if you take Government in the most enlarged sense, as including the whole supreme power, both legislative and executive, these words describe still only one side of it, the Legislative; for you cannot say, that the word *King* alone equally describes the other; for to describe the executive with the same particularity as this form of expression does the Legislative, it ought to go further than the *King*, and specify something of this sort, a Government by *King, Judges and Justices*; or in some other fanciful combination, which cannot but sound ridiculous, from its novelty. If you take Government in the more confined sense, as denoting only the executive Government, then the description is faulty; for every one knows that the Lords and Commons have no share in the executive Government. Again, the description is clumsy and immethodical, in as much as it contains things that are not *ejusdem generis*; for the King's Power is original and inherent; and that of the Lords and Commons derivative and by commission

mission; and it is a blameable want of analysis, and precision, to combine these in a way, that makes them look, as if they were of the same quality and degree. Again, the description is abundant and superfluous, if *King* is taken in the sense of the whole supreme Power; because we know that the supreme Power comprehends in it the legislative; and it is known, without specifying, that the legislative needs the Lords and Commons to carry it into effect.

Upon the whole, this expression seems to be used in two senses, and it cannot be correct in both; it is sometimes used to describe the Legislative, and sometimes the supreme Power; in the former it is not defective, I admit, it is only clumsy; in the latter it is defective, because it does not equally specify the derivative parts of the executive power.

But I believe it is more commonly thought by those who use it, to convey only one sense, namely, that of the Legislative; and such Persons think, that the Legislative and the supreme Power are synonymous and the same; but this, I beg to say, is a notion wholly mistaken, and unfounded. For it is, in the first place, contrary to the description of the supreme Power before laid down by *Lord Hale*, and the Attorney General,

ral, which must contain the administration of the Law, as well as the making of it; the Legislature therefore, according to them (and I quite agree with them) is not, as is too commonly imagined, the supreme Power of the State, but only half of it. And a supreme Power, like every thing else, ought not to be denominated from half its properties, but from the whole of them*.

In the next place this expression appears to me exceptionable, because it first gives an idea of the King in his executive Capacity, being distinct from the King in his Legislative; and afterwards, it insinuates, that the Legislative, in some measure, overshadows and controuls the Executive; this cannot but seem derogatory to the King; and, as such diminution cannot be

* Some very popular and very excellent Treatises upon the Law are deficient in method, owing to their following this Idea of the Legislature being the Supreme Power. They begin with the Parliament, and then come to the King, and under this last Title give an account of his different Councils; the first they name is the Parliament, of which you are always told, *they had treated before*; Why before? the concomitant and derivative before the substance and original! This shews, that in a just and luminous order, they should have begun with the King, and, having stated, that he has several Councils, they should then, and not before, treat of the Parliament, as the first of them. I find this fault in Blackstone, Wooddeson, and others. A departure from principle will ever lead into embarrassment.

in

in consequence of his own personal share in the Legislature, it of course follows, that all the power to controul and overshadow the executive appears to reside in the two Houses. This is a conception very prejudicial to Monarchy, and has a republican tendency. It sets the derivative authority above the original; the persons who act by commission, above him from whom they receive their Commission; all which notions are utterly inconsistent with that, which has been laid down by the best authorities; for they hold the King never to be in such high State and Dignity, as when he is surrounded by his Parliament; these Speculators, on the contrary, consider him as *then* most circumscribed in power, and most diminished in State and Dignity.

But these incongruities, and contradictions, would at once be avoided, if persons would adopt my hypothesis, which I maintain, is the legal and true one; I mean, that, what is done in Parliament by Statute, is done by the King himself, as much as what is done in his Council, or by his Officers of State; that all powers conferred, and all Restraints imposed by Parliament, are, in truth, Powers and Restraints devised by himself; that in such Cases he has only stipulated with his advisers in Parliament, that his Ad-
visers

visers out of Parliament shall proceed in such particular Cases, in the way laid down in the Parliamentary regulation, and in none other. If they would adopt this Theory, they would not need to charge Persons with stating the King's Authority too high, as they have done on some occasions ; nor would they be so indelicate as to bring the King personally in question at all. In all such Cases, the King is wholly out of the question, and it is a matter of controversy solely between his Advisers in and out of Parliament. The King's high State and Dignity remains the same, whether he does any specific Act by the intervention of the one, or the other, or by the concurrence of both ; and perhaps, the latter may be more for his honour, and prerogative Eminence ; for then he wields all the Powers of his Government at once, and gives to the measure an extraordinary stability and Effect.

Holding this sentiment, I do not always approve of a Topic, which is a favourite one with those, who very properly stand up for the prerogative ; namely, That it is derogatory to the Crown for certain Points of Royal Authority to be questioned in Parliament. Such discussion, may indeed sometimes be derogatory to the King's Ministers, and advisers out of Parliament,

ment, who otherwise enjoy the exercise of such authority ; but in my humble opinion, it cannot be derogatory to the King ; except only as any question agitated in a popular assembly, upon points *not* questionable, may be derogatory to the person, who is the object of discussion. But I own this scruple of mine ought not to have weight, except in the minds of those who think with me, on the relation between the King and his two Houses. If a time should come, when that leaven shall predominate, which disposes men to consider the King as a person distinct from his two Houses, such points may become something more than questions between those who bear authority under the Crown ; for then the prerogative must be supported, in direct contrast with, and in opposition to the Houses, as an Interest distinct from theirs ; and Ministers must make the best fight they can for the King as well as for themselves. This is an inconvenient hostility ; on the part of the assailants, it is called a proper jealousy of the prerogative of the Crown, and controuling the Minister ; but it might be better to smooth it down by the considerations above suggested. These considerations I shall ever cherish for my own guidance upon all such occasions.

M

I know

I know it is held by some, that this expression of King, Lords and Commons, if a description of the Legislature, is therefore a proper one of the whole Government; because, as they say, Governments are properly named from the most worthy and most eminent part of them, which is the Legislature. But I am inclined to criticise this reason of *most worthy*, as much as any of the former. Some may think *that* most worthy, and eminent which is ordinary, and of every day's application, as the executive; and not the Legislative, which is only called upon, when there is need of occasional interference, under some special circumstances; and surely a Government, or any other Thing, whether moral, or mechanical, should rather be denominated from its ordinary, than its occasional operations; from those that are most seen, preferably to those, that are seen seldom. Perhaps the passive nature of Legislation gives it less Claim to pre-eminence, than the Executive; the one merely lays down a Rule, which continues a dead Letter, till the other imparts animation to it, by giving it effect; so that Legislation is not only less frequent in function, than the Executive, but its own Acts may be said to be inchoate only, and incomplete, till the other lends its aid to give them operation.

ration. Again, the Executive is indispensably necessary to keep us from falling into Anarchy, and we can appreciate its force and effect; but new Laws are at best but experiments, that may fail; and though expedient, cannot be said to be necessary, till they have been tried. The Legislative not being the most necessary, how is it the most worthy, or most eminent? In truth the giving a pre-eminence to the Legislative, above the Executive, is a notion derived from the philosophising Politicians, and leads directly to Jacobinism; they lay it down, that every Freeman must enact his own Laws; this makes him his own Governor, and then they establish upon this the *Sovereignty of the People*. In our Legislature, this supremacy is ascribed by such reasoners to the representatives of the People. These are additional reasons why I disapprove of the Legislative being considered as the Supreme Power, or being allowed even to give denomination to it.

Upon the whole, therefore, the expression of *King, Lords, and Commons*, is not in my apprehension, critically speaking, an adequate and complete definition, or description of the English Government; because it does not define or describe the Legislature with accuracy

and neatness, nor does it define or describe the Executive at all ; because the Legislative cannot convey an Idea of the whole supreme Power, being only, in truth, half of it ; nor is it, by its supposed pre-eminence, entitled to pass for a definition or description of the whole.

Such departures from original principles, together with the fashionable terms of Legislative, and Executive, (a distinction purely metaphysical) have broken in some Men's minds, the intirety of the Monarchy, and given an impression of the King being a subordinate Officer, merely to carry into execution Powers intrusted to him by others. The introduction of new terms derived from the inventions of speculative politics, and unknown to our Law, may be illustrative and useful in discourse ; but they are apt to mislead and confound mere practical Men, who know things only by the conversation of the day : and indeed they gradually corrupt us all. We now hear only of the *Executive Power, The Legislature, The Chief Magistrate, The First Magistrate, The Nation, The People, The Three Branches, The Minister,*

Byzantinos proceres, Graiosque Quirites.

instead

instead of the good old phrases of the *King*, *The King's Servants*, *The King's Subjects*, *The Subject*, and the like. Such new words give rise to new Theories to answer them; Men rack their inventions to find principles that suit the language of the time, till the King and the Government are represented and believed to be any thing, but what they really are.

Indeed, all things of positive institution are liable to be corrupted, if they are worked upon by speculations derived from any other principles than their own; and when such principles obtain the high name of philosophy, the errors they produce are not to be calculated; for philosophy is of too proud a descent to be made ancillary to any thing else; if it is brought at all to bear upon a subject, it is wholly to controul and dictate; it comes not in aid, but as a test; the subject in question is to be tried by it; and most of its peculiarities are to be accounted for, not upon its own principles, but upon those of the particular philosophy applied to it. This is flattering to the Speculator, because it gives an ascendancy to the reasonings of his own mind; it gives him also sensations of freedom that are agreeable and convenient, for he thus releases himself from the obligations of the positive Institution, which ought to be binding of themselves,

selves, and he is left to chuse the sovereignty of his supposed philosophy, only in such portions, and in such degree, as his own fancy, which he calls reason, may happen to impose on him. We all know how Christianity in early times, was corrupted by the superinduction of the platonic philosophy; and in latter times, by the Aristotelian and other systems of the schools. In those respective periods, the definitions, the language, the hypothesis of such schemes, filled Theology with learning wholly unknown to Christianity, and to the text of Scripture.

It happens just so in the science of Government, when men depart from the text of Records and Law Books, and seek for principles in the Theories of philosophising politicians. If *Sydney*, and *Locke*, *Price*, *Priestley*, *Montesquieu*, and such writers are to be held out as possessing the only true philosophy of Government, and our Constitution is to be tried by their tests, it is not to be wondered, that great errors arise, and that much debate should be caused upon what is, and what is not the Constitution. But the followers of such writers, with all their new lights, will ever be in the dark; like men who are dazzled with the first glare, but are unable afterwards

afterwards to pick out their way ; for after all (*cum ventum ad verum est*) when they come to the trial, these philosophers are not the witnesses, their positions are not the authorities, for deciding any one point of English Government. They are all incompetent, unjuridical, unconstitutional ; you must resort to Records and Law Books ; you must come at last to the Statutes, to *Coke*, to *Hale*, and the rest. In spite of all the unwillingness to acknowledge it, it is the Law and the Lawyers, that must ultimately decide upon the form and structure of the English Constitution of Government. It must be so, because every thing relating to it must, if brought into litigation, be decided in their Courts ; it ought to be so, because *they* have had the training, and possess the documents that qualify them for it. I hope serious men will gradually be drawn from the vain philosophising politicians, who impede the progress of real constitutional information ; and that they will attend more to the veritable text, and the genuine principles and doctrines to be extracted from it*.

And

* An example of this may be given from *Montesquieu* ; he lays it down, that when the Legislative, Executive, and Judiciary

And yet, after all my criticism, I confess this description of King, Lords, and Commons, faulty and inadequate as it is, in the present state of things, was at one time appropriate, and of great force. We may well suppose, that such an expression was common in the Grand Rebellion, when people could not speak of the Governments they had successively seen, and the ancient one they had lost, without some expression like this. The earliest use of it, that I now recollect, was on an occasion, to which all of us ought to look back with thankfulness; I mean the restoration of the ancient Monarchy, and all its attendant consequences, in the reign of Charles II. This was done by a motion in the House of Commons, alledging, that the English Constitution, is a *Government by King,*

Judiciary Powers are united in the King, there can be no freedom; now we have shewn, that these are all united in the King of England, and have been so for centuries; and that *Lord Hale* deemed it necessary, upon general principles, they should be so united. *Montesquieu* knew, that all Kings, as well as the King of England, must exercise these different functions by means of different officers. Where then is the sense of the principle? Heretofore, such speculations were only errors; they are now made authorities for trying and condemning all the Governments of Europe. I repeat it, let men look to the textual verity, and learn what the Constitution is, not what *men's fancies would make it.*

Lords,

Lords, and Commons *. After this, it could not but be pleasing to the ear of every true Englishman; and it is not to be wondered, that it became the test and sign of attachment to our old tried Constitution. It might well continue so, while the question was merely between Monarchy and Republicanism; but since the new opinions have spread, about the Reform in Parliament, by which the disaffected hope to make the Monarchy useless, though they may not succeed in destroying it, these terms are in themselves, as I before said, neither a test, nor a sign of attachment to our Constitution as by law established.

I should think, that the nature of our Government is better expressed by the single word *Monarchy*, or with the epithet of *limited* (not *mixt*, for that favours of co-ordination, but) a *limited Monarchy*. This concise denomination is in a far better taste, as well as much more safe, than adducing words to denote the mode of that Monarchy, or any of its limitations, or qualifications. But I shall never quarrel with modes of speech, merely because they are illogical, or void of taste; it is only

* On the 1st May, 1660.

when they give countenance to wrong or dangerous principles, that they are worthy of criticism. It is in this view that I consider the above description of our Government as exceptionable. It appears to favour, more strongly than that of the *three estates* and *three branches*, the republican notion of co-ordination; and why use more words that lead to mis-conception at least, if not to mischief, when both might be avoided by using a single one!

There is another passage in the debates upon the regency, to which I beg the reader's attention. We remember the singular opinion then started by Mr. Fox, which was at the time pronounced by as good authority as his own, (not to be a libel as he has pronounced my pamphlet, but) to be Treason against the Constitution; and it is a pity such instances of opposite opinions on points of the Constitution, do not render those gentlemen a little more moderate, when they are to pass judgment upon others.

Mr. Fox made the singular declaration, that the Prince of Wales had a right to assume the Regency. *Mr. Pitt* denied that he had any more right than a common subject, and declared

ed, he thought Mr. Fox's assertion to be very like treason.

When this question came to be argued, not one shew of authority could be found for Mr. Fox's declaration, in either House of Parliament but a scrap of Latin, which was an affectionate expression in some charter of Henry VI. from whence it was concluded, that the King and the Prince of Wales were, in the eye of the law, as one person.

This attempt was held very cheap by Lord Thurlow then Chancellor. "*Would their Lordships, says he, take a metaphorical expression, and force a literal meaning upon it*.*"

In the House of Commons Mr. Pitt is reported to have expressed himself upon this attempt at construction in the following manner :
 " A different opinion was entertained of that
 " Record by persons of great eminence and
 " authority in the law, and by their opinion a
 " far different conclusion was drawn from the
 " same record ; *the metaphorical expression of*
 " *which was not to be taken literally†.*"

* Debrett's Debates, Vol. 26, pa. 22.

† Debrett's Debates, Vol. 25, pa. 54.

Thus we have the authority of *Lord Thurlow* and *Mr. Pitt*, expressly declared, that a metaphor is not to be taken in a literal sense; we may be supposed to have also the concurrence of the Majority of both Houses of Parliament, who were on the same side with them; and we know not how many more *learned persons of eminence in the Law*, to whom *Mr. Pitt* allude^s in his speech.

I hardly know, whether there is to be found in the Law Books, an opinion, or dictum, enabling us to say precisely, what is the degree of weight and credit to be allowed to a metaphorical expression, when it becomes a matter of judicial inquiry. I believe that nothing of so indefinite and unstable a nature, has ever been deemed a matter of sufficient importance to be brought before a Court; I will venture to say, it was never before made the ground of a *criminal* proceeding. But in this defect of the Law Books, it is fortunate that there is such recent, and such respectable parliamentary authority, to shelter us in struggling with a parliamentary censure and prosecution, for a metaphorical expression.

And

And here I shall close the preliminary disquisition upon those points of Constitutional Law, which I thought proper to submit to *your* consideration, before I entered upon an exposition of the paragraph that has been so censured, and which was afterwards chosen by his Majesty's Attorney General, as the only one he could find, that gave a pretence for filing an information. In so doing, I trust I have possessed you, not only with my theory, but with the authorities and grounds on which it stands; and that you will now come to the examination of this paragraph, with the same train of thinking, that occupied my mind when I wrote it. Coming to it so prepared, I believe you will find no difficulty whatsoever, in following me through the remainder of what I have to say.

I trust I shall shew, that this paragraph contains nothing, which is not fully warranted by the authorities you have just perused; and that it is in unison with the best sentiments, and the most *common and ordinary* opinions on the Constitution. For I mean to contend, that this paragraph is not only void of any criminal design, but that it is intended to convey a
sense,

sense, which all persons not wholly unread in such matters have in their minds, and which needs no learned or far-fetched authorities to support it.

I shall take the paragraph sentence by sentence*. *With the exception, therefore, of the advice and Consent of the two Houses of Parliament and the interposition of Juries; the Government and the administration of it, in all its parts, MAY BE SAID to rest wholly and solely on the King, and those appointed by him.*

The first observation, that occurs upon this sentence is, that it is a conclusion, ("therefore") from something that went before, and on that account, it appears to me to be a very unfit passage, upon which to ground a criminal charge; for if it is ever so exceptionable, it imports to be only a conclusion; and if bad, can therefore be nothing worse than bad reasoning: farther it may be observed, that this conclusion, is a very qualified one, for I have used the words, *may be said*. But without insisting on this answer to the Charge, what is there in the sentiment to censure, or call libellous? Have I in this Sentence, taken

* P. 12.

more from the House of Commons, than the Attorney General, in his Address before quoted? No, I give to the two Houses precisely the same place, that he gives them. As to Juries I allow them the place in the administration of Government, but the Attorney General has totally forgotten the existence of Juries in his sketch of the Constitution. He says, *The power of making Laws and enforcing the execution of them, when made, is vested in the King.* He then goes on to admit the advice and Consent in some cases, and advice in all Cases, one applying to the two Houses, the other I suppose to the Privy Council, and other Advisers, but he says nothing about Juries participating, unless their occasional interposition can be said to be *The advice* he alludes to; but this is too strained a construction, and he can hardly be supposed to advert to *them*, by so unsuitable an expression; but most assuredly to another sort of advice, namely, those Councils of the King, described by *Lord Hale*, his Privy Council, his Council learned in the Law, and the others.

If then the Attorney General's performance were to be treated as mine has been, I contend, as it has been said of me, that I would make
the

the King every thing, and the People nothing, so it might be said of the Attorney, that he would make *the King, and his Judges every thing, and Juries nothing.*

But this charge against the Attorney General would be unjust, and the whole of the Criticism I have just made on what he has said, I admit to be captious and ill-founded; he said on that occasion as much as he need say; he was giving a sketch of the English Government in the outline only; it is a true and correct outline; he was not bound to fill it up with all the shades, and with every colouring, that it was capable of receiving.

But if the Attorney General is justified in saving less of the popular part of Our Government, because his subject did not compel him, what allowance is to be made to me, who have alledged more of the popular part of Our Government, where my subject did not, however, require me to be more explicit than the Attorney General.

I claim no distinction to myself in having so done, nor impute any thing to the Attorney General for not having done it. There
are

are various ways of treating the same subject, the way I had taken, on this Occasion, suggested to me to speak of Juries, as participating with the King's Judges, in the Administration of Justice ; it was a Combination that presented to my Mind an advantageous View of Our Judicial system ; where the King, and his subjects *join* in protecting the Lives, and Properties of every individual ; where the Law is pronounced by those, who are learned in it, and the Intention of the Parties is treated as a fact to be examined by their fellow Countrymen, who compose the Jury. I little thought, when I penned this passage, that it would come to be examined by this very Tribunal, at the suit of his Majesty's Attorney General !

The paragraph goes on, “ *Those two adjuncts of PARLIAMENT and JURIES are subsidiary and occasional ; but the King's Power is a substantive one, always visible and active.* ”

What is there extraordinary in this ? Does not every Man know it, and acknowledge it ? Parliament, which is used here, as it often is, *for the two Houses of Parliament*, when compared with the King, is only an adjunct ; for it is

O

his ;

his; and it sometimes is, and sometimes is not ; it is not, (at least it is not in function) during the recess ; it is not in existence after the dissolution, or after the expiration of seven years, should it be permitted so long to continue. So of Juries, they are only an *adjunct*, when compared with the King's Judges ; for they sometimes are, and sometimes are not. When an action is commenced, and the pleadings go on, there is no need of a Jury ; after the Verdict there is nothing more heard of the Jury ; the Courts begin and finish all Actions without a Jury ; in many Actions there is no Jury in any part of the Cause, because the parties happen not to put themselves upon a Jury, but choose, by pleading, rather to rest on the Judgment of the Court.

They are therefore adjuncts, that are *occasional* ; and they are *subsidiary*, because they are called *in aid*, when the peculiarity of the occasion requires them. The Parliament is never summoned but when the King needs their Aid, and he so expresses the cause for calling them in the Writ of Summons, as we have before seen ; *for some great and weighty*

ty affairs, concerning us, the State and defence of Our Kingdom. In like manner of Juries, it is expressed in the form of legal proceeding, that the party has put himself on his Country, which Country you are, or, the party prays, the matter he alleges, may be inquired of by the Country, that is, by a Jury; Nothing can be plainer, than that the resort the King has to his Parliament, for matters of State, and to Juries for Matters of Judicature, is only occasional and subsidiary.

On the other hand, the Paragraph goes on to say, *but the King's Power is a substantive one.* Why substantive? because the two former which I had just called *adjuncts*, might have been called *adjective*; things that could not stand by themselves; and therefore the King's Power, to which they were occasionally annexed, is grammatically speaking *substantive*, standing by itself. Constitutionally it does stand by itself, and originates from itself. There is no Writ, Commission, or derivative authority whatsoever to constitute and appoint the King, as there is to constitute and appoint every branch of the Government; he becomes King by descent, or demise of the Crown,

or by his own enactment in Parliament, if the Crown is not conferred by the enactment of some other King*; he therefore may be said to be Constitutionally self-existent, but clearly, and without appearance of assumption, he may be called a *substantive power*.

There can be no doubt of the King, that is, the *Kingly Power*, being always *visible and active*; for he never dies, if he did, that is if there was an intermission in the exercise of the Regal Function, the whole Constitution would be at a stand; which needs little of Argument to enforce it, since the Debates upon the Regency. The King is always *active*, he gives activity to the Parliament, after it has been once prorogued; and when it is dissolved, we look to him, and to him only, to bring into Life a new Parliament. I might therefore very well add, as I have, *by his officers, and in his name every thing is transacted that relates to the peace of the Realm, and the Protection of the subject*. To do this, to discharge these duties, he must be always active, and always visible too.

* For the manner in which an English King is constituted, see Post. p. 164.

Does not the peace of the Realm depend upon him, from the invasion of a foreign Enemy on our Coast, down to a petty broil in the street? Is it not the King's peace that is maintained by the Constable; and is it not the King's fleets, and armies that protect the Kingdom, from one end to the other? the King's Judges, the King's Justices, the King's Admirals, the King's Generals, with all the train of subordinate officers, whether Civil or Military, or Naval; whether a Man is in his own house, or in the *King's* highway, whether he is anxious for his Life, or his property, whether he contemplates the King's Parliament, or the King's Courts, Commons in Parliament, or Commons on Juries; wherever he places his trust, and reposes a confidence best suited to his own way of thinking, he must discover, that it is through, by, under, and from the King, that we possess, what we do possess, of the effects of Law and Government. *Regis sunt omnia plena.*

Such is the form of the Constitution, it is not made so by me, but such I found it, so it is established by Law, and so I have exhibited it to you in the former part of this Letter, on
the

the best authorities. And however it came, from whatever origin, I continue still to think, as I have there expressed myself, that *the subject feels this, and acknowledges with thankfulness a superintending Sovereignty, which alone is congenial with the sentiments and temper of Englishmen.*

Most assuredly, these are the effects, and the testimony of them is abundant all over the Kingdom. The Loyalty that has for several years surpassed every former demonstration of attachment, is irrefragable proof of what is here said; *it is felt, and it is acknowledged*; there is reasoning in it, as well as feeling; a reasoning suggested by the late events in another country; and it is accompanied with *thankfulness*; because those events have made us understand the blessings, we enjoy under a *Monarch*. All our sentiments of thankfulness, and exultation, are directed to the Monarch upon the throne. It is not to the Houses of Parliament that the people express their attachment, they are transitory and of short date, and may be cut off by the advice of a Minister more short lived than themselves; No, it is to the King; *Loyalty to the King*, includes in it, an attachment to the Constitution in all its parts; we know that we may

may have Lords and Commons, and yet have no King ; it was so for some years during the Rebellion of 1640. We may have a House of Commons without Lords or King ; it was so for several more years during the Rebellion of 1640. But if we have a King, we are sure of having both Lords and Commons, because he is bound by Law occasionally to hold a Parliament, and because the throne cannot be supported without their occasional aid and advice.

This is well understood by the *good sense* of the Nation ; and was never more strongly manifested than lately, since there has been a disposition to cavil at *every branch* of our Constitution. The Nation has taken a short way, for crushing all seditious attempts at once, by rallying round the Crown ; Loyalty is the shield, that is every where presented against the arrows of the disaffected and seditious. *The subject feels, and acknowledges with thankfulness the superintending sovereignty of the King.* Every heart is warmed with this single object. Every public place rings with applause and exultation, when the name of the King is sounded.

For

For my part, I am most decidedly of opinion that in these times, when we are threatened with assaults from democracy, the true way of giving support to the Constitution, is to support *the Crown as it is by law established*. Let those who feel predilection for different departments of the Constitution, apply their pains, and attention, according to the suggestions of their own minds. The present is a season of real danger, when every part of the Fabric is attacked, and every exertion will be useful in one quarter or another. Let those who are so disposed, bestow their affection on the House of Commons, if they think by supporting *that*, they can save the rest; let others bestow their affection on the House of Lords, if they believe *that* to be a main pillar of the Building. I hope they are all on my side; but, for myself, I shall apply all my thoughts, in these peculiar times, to support the Crown; being of opinion, that if the Crown is safe, every thing else must be saved. My language is, God save the King! and so be it.

Feeling, as I have just declared, I am ready again to repeat, that this superintending sovereignty

reignty of the King is *ALONE congenial with the sentiments and temper of Englishmen.*

I have already urged enough to satisfy *you*, no doubt, that it is *sufficiently* congenial with their sentiments and Temper ; but it must depend on a little historical retrospect, to determine, whether it is the *only* Government, which is so.

As to this, perhaps, we need look no further back than the Rebellion of the last century ; when after a struggle from 1640 to 1660, during which various forms of Government were attempted, the Nation, fatigued and disgusted, was glad to return to the old Government once more ; and Charles II. was seated on the Throne with the same powers and prerogatives as any former Monarch, without regard to the different speculations of Reform, that had, in the intermediate time, engaged the successive Politicians of the day. Can there be a stronger proof than this, of the natural disposition of the people of this Country to acquiesce in the Government of a King, in preference to all others ? There can be little doubt, that a Government which has lasted so many Centuries as ours has, is congenial with the sentiments and temper of the people. I should hold it to be the strongest

P

and

and perhaps incontrovertible evidence that it was so, for how otherwise should it have so long endured? and, in a complicated form like ours, how could so many minds be brought to work upon it, generation after generation, to keep in vigour its various parts, and bring it to its present perfection, unless they successively felt a proneness, and good disposition to the employment.

A very singular passage in the History of that eventful period may be adduced to illustrate what I now say.

It is related by *Sir Bulstrode Whitlock*, who acted a considerable part in every change that happened, who was bred a Lawyer, and held the Great Seal in the time of the Republic, that a meeting was called by *Cromwell*, at the Speaker's House, of several Members of Parliament, and officers of the Army, for the purpose of consulting about the settlement of the Nation. At this meeting, he tells us, he delivered to *Cromwell* and the persons there assembled the following sentiments, which I give you in his own words.

“ The

“ The Laws of England are so interwoven
 “ with *the Power and Practice of Monarchy*,
 “ that to settle a Government without some-
 “ thing of Monarchy in it, would make so
 “ great an alteration in the proceedings of
 “ our Law, that they had scarce time to rec-
 “ tify it; nor could they well foresee the in-
 “ conveniences that would arise thereby.
 “ Therefore, he added, that there might be a
 “ day given for the King’s eldest son, or for
 “ the Duke of York his Brother to come into
 “ the Parliament; and upon such Terms as
 “ should be fit and agreeable both to our civil
 “ and spiritual Liberties, a Settlement might
 “ be made with them*.”

Such are the sentiments and words of this
 singular Person; being one of those, who had
 helped to pull to pieces the Machinery of our
 Constitution; and when they came to look
 closely into the workmanship of it, discovered
 that they had been labouring only to make
 mischief, and that the old Machine must be
 put together in its former state, to go on, as it
 had before for centuries.

* See Dr. Morton, the Editor’s, Preface, to the Parlia-
 mentary Writ, p. 33.

We are told that *Whitelock* was so persuaded, that no Government but a Monarchy would go on in this country, that he afterwards often renewed his instances with *Cromwell*; though, as we all know, without effect *.

But that Usurper gave at last so much into *Whitelock's* opinion as to place himself in the Room of Charles II. He endeavoured to amuse the people with a *Protectorate*, as a substitute for Monarchy; as if the essence of Monarchy consisted in the Rule of a single Person; or that the English would be persuaded, they, in truth, had a King, unless they saw him endued with all the attributes and properties of the antient English Monarchy.

If the English Constitution is then of such a form, that Monarchy cannot be dispensed with, according to the opinion of *Whitelock*, and if we are agreed that such a Government could not have subsisted for ages, unless it had been congenial with the temper and sentiments of Englishmen, it is a little to our purpose to know, what is that temper and sentiment which is so congenial with Monarchy. To this purpose

* See Dr. Morton, the Editor's Preface, to the Parliamentary Writ, p. 34.

a cotemporary of *Whitelock*, a person of great consequence and authority, has made a declaration as to our national character, which must be heard with infinite pleasure by every Englishman. The person I mean is *Lord Clarendon*.

At the opening of Charles the Second's first Parliament, after those disorders, which *Whitelock* thought, could not be terminated but by the Restoration of Monarchy, *The Lord Chancellor Hyde*, according to the fashion of those times, delivered a speech as from the King; and amongst the considerations which he enlarged upon, for the purpose of composing and quieting differences, he used these remarkable words; he conjured them from the King
 “ to join with him [i. e. the King] in re-
 “ storing the whole nation to its primitive
 “ temper and integrity, to its old good man-
 “ ners, to its old good humour, and to its
 “ old good nature, a virtue so peculiar to
 “ them, so appropriated by God Almighty
 “ to this Nation, that it can be translated into
 “ no other language, hardly practised by any
 “ other people*.”

* Chandler's Debates, vol. 1, p. 24.

Thus

Thus we have the sentiments of *Whitelock*, on the character of our Government, and those of *Clarendon* on the character of the people; and we learn that a certain sort of good old manners, good humour, and good nature, a national temper and integrity of our own, were the characteristics that generated and brought to its perfection, the Monarchy of this Country; that we lost our Constitution and national character together, and that they depended upon one another for their restoration and continuance. Let Englishmen be true to themselves, and the four leaven of Republicanism will never infect the genuine Constitution of our manners, or our Government!

If such were the reflections of these two considerable men more than 130 years ago, at the close of the civil wars, what ought to be ours at this time, looking back as we do to a period subsequent to that, I mean the Revolution, when the Monarchy stood another shock, and survived, not only unimpaired, but, in my opinion at least, strengthened and confirmed; and recollecting what has happened in our time, and is now recent in our memory; I mean, when the whole nation, as one man, declared, in a manner more express,
more

more unanimous, and more ardent than was ever known (at the time of the Loyal Associations in the close of the year, 1792) that they will stand by the Kingly Government, will have that Government and no other; what, I say, should be our reflection, but the very one expressed in the paragraph, namely that it is *the one, which alone is congenial with the sentiments and temper of Englishmen?*

Perhaps, it is hardly worth while to notice here a captious objection, that has been taken to this last sentence, as if I meant to say, that the King *alone*, without the Lords or Commons, was a sovereignty congenial with the sentiments and temper of Englishmen. I will say nothing by way of answer to an imputation so unlikely to be deserved by any one, who possesses a grain of understanding; but I shall merely remind you, that, grammatically speaking, this cannot be the sense; *which alone* is a relative, that must have an antecedent. The antecedent is *the King of England*; the King of England can only be such, according to the forms of the Constitution; the sovereignty, therefore, *which alone* is congenial with the sentiments and temper of Englishmen, is
the

the English Monarchy, which I had just been describing, and applauding; whose property it was to be always visible and active; and which is revered for its creating, organizing and governing powers, even when some of the great means and Instruments, which it employs, are laid asleep, and dismissed from their functions.

I come now to the passage which has been so much censured, and so much misunderstood; but which would not have suffered in either way, if it had been read in the same temper, in which other pieces of composition are read by those, who wish really to comprehend them.

The paragraph goes on, with a view of summing up, in a closer and more emphatic style, (which led me into a Metaphor that I think neither unnatural, nor unsuited to the subject,) in these words.

“ In fine, the Government of England is a MONARCHY; the Monarch is the antient stock from which have sprung those goodly branches of the Legislature, the Lords and Commons, that at the same time give ornament to the Tree, and afford

ford shelter to those, who seek protection under it. But these are still only branches, and derive their origin, and their nutriment from the Common Parent; they may be lopped off, and the Tree is a Tree still; shorn indeed of its honors but not like them, cast into the fire.

Here I make a pause, because I had placed here a full stop; but certain malicious Commentators have tacked to this sentence, a member of the subsequent one, *the Kingly Government may go on in all its functions without Lords or Commons*; intending to leave upon every one's mind, who read it, a sentiment the most odious possible, and making that sentiment the sum and-conclusion of the Author's whole deduction; this misrepresentation appeared in all the newspapers, and indeed they had too good an authority for so inserting it, for it is actually so stated in the Reports of the Parliamentary debates *. Such a gross contrivance in order to poison the minds of the public, and prejudice the judicial proceeding that was to follow, was worthy of its Authors, and they are

* See the Newspapers of the day, and the Parliamentary Debates of Stockdale, Woodfall, Debrett, or any other. Our Representatives in Parliament are not responsible for all the incoherence reported of them in such publications.

welcome to all the advantages it gave them, and all the Honor that belongs to such an imposition.

I come now to that part of the passage, which, I believe, has alone furnished a pretext for pushing this attack upon my publication to an extremity. But, however exceptionable it may appear to some persons, I now approve of it, as much as when I first put it on paper ; I am ready to defend every sentence and word in it ; and I promise myself, that when I have concluded, there will be very few, who will not be of my mind.

In the first place, surely, a Man need not be put upon his defence, for saying that the Government of England is a Monarchy. If so, what should have been done to *Mr. Burke*, who as you have before heard, said in the face of the House of Commons, that it is an *hereditary Monarchy* ? most assuredly this Government is a Monarchy, it never was doubted that I ever heard ; and it has been so termed over and over again by Law-writers of the best authority, from the *Lord Chief Justice Fortescue*, in the time of Henry VI. down to *Mr. Justice Blackstone*, and I do not think it worth while
to

to quote any authority, (more than I have already) to warrant this assertion. As little can it be doubted, that the Monarch is the *stock* from which have sprung both the Lords and Commons. This is true in two senses, one historically speaking, the other, constitutionally. Speaking constitutionally, they spring from the King, because it is by the King's Writ they are called to Parliament; and this is true not only of the Commons, who have no existence at all except in Parliament, but it is true likewise of the Peers; for though they bear their Titles, and continue Lords, whether a Parliament is in being or not; yet I believe it is considered, that most of their privileges attach to them as Peers of Parliament. However that may be, it is only by creation from the Crown, that they become what they are; they, or their ancestors have all of them been either created by patent, or summoned to Parliament, by Writ; and it is by Virtue of such Patent, or Writ, that they (and their descendants after them) have title to a seat in the House of Lords. Surely, then, it is correctly speaking, in a constitutional sense, to say, the Lords and Commons are sprung from the Monarch.

If this is true, *constitutionally* speaking, it is sufficient for our present purpose ; and I do not think it necessary to enter into an Inquiry that was once carried on with great warmth, I mean of Argument ; for I do not remember, that any one was prosecuted, either on one side, or the other, as a Libeller of *the Government in King, Lords, and Commons*, though the controversy began in the wicked Reign of Charles II. It is well known, that it has been a point of *History*, much agitated, at what Period of time, the Commons commenced and became a part of the Legislature. It is a question, that cannot have escaped the researches of the Gentleman, who has, from Circumstances, been obliged to answer for the Opinions contained in my first Letter. In his *History of the English Law* published 14 Years ago, he had occasion to glance upon this question, but none of his political Enemies have thought it worth while, either to refute, or to prosecute any of the Opinions he has there delivered.

It is well known, that the two great names in this dispute, were *Mr. Petit* and *Dr. Brady* ; *Mr. Petit* maintained that side of the question, which

which was for assigning to the Commons a very high antiquity, as a Part of the Legislature. *Dr. Brady*, on the other hand, contended, that the Evidence of Records, and History gave no trace of a House of Commons, in its present shape, earlier than the Reign of Henry III. nor of any regular and constant establishment of such a House, till the Reign of Edward I.

This latter Opinion seems to be the better founded of the two; and it is now the received opinion. Most of the modern writers on our Laws and the Constitution have proceeded upon it as settled. Such is the line taken by *Hume*, and by *Blackstone*. Their concurrence has given such sanction to this Hypothesis, that, I believe, it is no longer disputed; and Persons, who have made up their minds upon such authority, may very well say, that, *historically* speaking, the House of Commons owes its origin to the Crown, and is sprung from it.

It is well known, that the Cause of the warmth, with which this Dispute was handled, arose from a Notion, that it would set the Privileges and Pretensions of the Commons upon

upon a higher footing, if they could be proved to be of very remote Antiquity ; and that so late a period, as that of Henry III. and Edward I. and the rebellious proceedings that were the immediate Cause of their being summoned to Parliament, gave them a very low origin in point of time, and something very like usurpation in point of Title ; neither of which were suitable to the Character, becoming the Commons of England in Parliament assembled.

To me this appears to be little more than conceit, and sophistification. As if the *Habeas Corpus* Act, which passed in the Reign of Charles II. were not as valid, and valuable, as the 29th Chap. of Magna Charta, although the latter has the advantage of 400 Years more antiquity ; or that the Bill of Rights passed in the beginning of the Reign of William and Mary was surpassed in excellence by the Petition of Right made in the 3d Charles I. because the latter was of an earlier date.

That Men, with squeamish appetites for Liberty, should be able to raise heats, and create Parties upon such questions of History, and of mere speculation, seems strange to us at the distance of 100 Years ! The motives and inducements

dugements to idle contention, like this, pass away with the struggle; and posterity look back at the feuds of their Ancestors, with astonishment and scorn.

The time is not distant, indeed I believe it is already arrived, when those, who read the Paragraph upon which we are now mispending our time, will look back with scorn and contempt on the stir, that has been made about it!

However, whether this passage be taken historically, or constitutionally, I shall contend, it is truly said, that the Lords and Commons are sprung from the King; and I shall take upon me to add, that, in my Opinion, even if it were not truly said in either of those senses, it is yet no Libel, nor any thing like it; It is an Opinion, in which a Man may be wrong, without any breach of the Law.

But now we are come to the *Fatal Tree*. We are now come to the Metaphor, of which so much has been said, and which, as has always been understood, made the very poison of this famous Libel, and the Git of the prosecution that was instituted. To *lop off* the House of
Lords

Lords and the House of Commons was a pretty plain insinuation ; no concealment, it must be owned ; and dearly ought we to answer it !

But so singularly do things turn out, when they are examined, that after the trouble I have given you, to read explanations, and expostitions of my meaning, on other parts of this paragraph, I am disposed, now we are arrived at the point, on which the whole of this debate turns, I am disposed, I say, not to give any explanation at all of this Metaphor.

I have the Authority of *Lord Thurlow* for saying, that a metaphorical expression is not to be taken in a literal sense ; I have the Authority of *Mr. Pitt*, for the same ; I have the Authority of several persons of great eminence, and authority in the Law, whom *Mr. Pitt* vouches, but does not name.

The metaphorical expression, which was then advanced as a Title to the Crown, was exploded with scorn and contempt. “ Would your Lordships,” said *Lord Thurlow*, “ take a metaphorical Expression, and force a literal meaning upon it ?” This was all the answer given to the precedent quoted for the Prince of Wales’s

Wales's right to the Regency. It was, in truth not an answer, but an excuse, a reason for not condescending to give any answer at all. The matter alledged was not traversable, it was not debateable; it was a metaphorical expression, that was laughed out of Court.

So I now say, would any Man of Common honesty take a metaphorical expression and force a literal meaning upon it, (not in a matter of private discussion, or of Criticism, but) in a matter of Crime?

Yet I am content (after making this protestation) to dispose of this part of the passage, as I have of the others, by a short exposition of my meaning, that it may appear, there is not a sentence, or a word, in the whole of this mis-contrued passage, which cannot be justified to the full.

If this metaphor is a matter to be spoken upon seriously, and in the way of Argument, I might, very fairly, contend, that a Metaphor of any length, or that any series of figurative language, ought not to be made the matter of a Criminal Charge. Words in order to be deemed libellous, or seditious, or trea-

R

sonable

sonable must be spoken with deliberation ; if they are not, they convey no design of the mind, and nothing criminal can be imputed to the Writer. Now a metaphor that runs into length, or any train of figurative language, is very often, not formed by the mind at once, and previously to its being put to paper ; but it grows as the Writer goes on, idea arising from idea, and one word generating another, without any original plan, but conforming to a succession of fanciful objects, as they present themselves, and ending in some point, or conceit, that suits well enough with what immediately preceded, and produced it, but which has very often little connexion with the writer's first design, when he began to put his pen to paper. Those who are in the habit of writing have experienced this ; an example of it may be seen in the following passage in Shakespeare's Play of Romeo and Juliet. Romeo just going to expire on the Corpse of his beloved Juliet, exclaims in the following expressions :

——“ Eyes look your last !
Arms take your last embrace ; and lips, O you
The doors of breath, seal, with a righteous kiss,
A dateless bargain to engrossing Death.”

Now

Now, as we are upon a matter that is very absurd, allow me to match it with a supposition, that some *constitutional Lawyer*, or other such person, were to bristle, and take high offence at Death being thus turned into an *engrossing Clerk*; for he must impose some meaning which is not only very absurd, but next to impossible for the author to have had, or the case would not be parallel to mine.

In such case, I think the Editor might defend his Author in this manner. “ Most
 “ assuredly our author did not mean any of-
 “ fence to the profession of the Law; quite
 “ otherwise, for it is believed, that Shake-
 “ speare served the early part of his time to
 “ an attorney; and nothing could be further
 “ from him, we may suppose, than such un-
 “ handsome return to his former calling. Be-
 “ sides, it does not seem to me, that the pas-
 “ sage will bear any such offensive meaning;
 “ it has all happened very innocently, merely
 “ from the word *Seal* in the preceding line;
 “ it is all a play upon words, and be assured,
 “ when he wrote the word *Seal*, he had no
 “ more design to write *engrossing Death* than
 “ *Slopped velvet suit*, or *Ferrekin*. It was all
 “ the chance of words.

“ *To seal lips with a kiss*, was as common a
 “ phrase in Shakespeare’s time as in ours; and
 “ as Romeo was to close his mistress’s lips for
 “ ever, *seal* might have the emphatic meaning
 “ of *sealing them up for ever*, but as soon as our
 “ Poet saw seal upon the paper, images of
 “ former times arose in his mind,—a *Deed*, and
 “ the *Date*. Oh! *Dateless*, had something to
 “ do with this last farewell; it must have a
 “ substantive to support it, and one that was
 “ suited to it; and behold! on a sudden, in-
 “ stead of sealing her lips, He seals a *bargain*;
 “ a *dateless bargain*; and to whom could it be
 “ sealed, but *to death*! having got so far in the
 “ transaction, it is not to be wondered, that
 “ he made it *engrossing death*; not engrossing
 “ parchment Deeds, but engrossing the ma-
 “ kers of them, bargainors and bargainees all
 “ together, with the first and every other sons,
 “ that should come upon the face of this mor-
 “ tal Earth.”

Such might be the defence of the poet,
 if he were treated as I have been; and, I think,
 the most testy and captious accuser would be
 ashamed to contend further, that there had
 been any premeditated or evil Intent; but he
 would admit that, it was wholly an affair of
 mechanical composition, where words make

words, and the production is so fortuitous, that the Author ought not to be responsible for it.

I shall now apply this sort of criticism to the Metaphor in question. I verily believe, for I protest I do not remember, that I finished this passage without having had any more original design, or plan than the poet; assuredly, I never said to myself, now I will figure a tree, and there shall be branches to it, and these shall signify the Lords and Commons, and they shall be lopped off and cast into the fire with contempt, and be there destroyed, but the Trunk of the Tree shall remain, and shall resemble the King surviving the destruction of the other powers of the Legislature, and reigning solely and for ever, alone. I never could conceive such a design; it was no part of my plan, as the plan is easily to be collected from the Tenor of the Pamphlet; the whole drift of which is, to recommend and extol the constitution, as by Law established.

Nothing more was meant here, than shortly to recapitulate, and enforce, what had before been opened, namely, that the King is the supreme head of the State, and that all the departments

partments of the Government take their origin from him. With this idea in my mind, I imagined the Monarch to be the *antient stock* from whence they all sprang; having written the word *stock*, what so obvious to occur as the branches of the Legislature, an expression in the mouth of every body? and here I cannot help saying, that if this were the composition of any one, but myself, I should say we are obliged to the author for the use he has made of a very common image; which he has improved into a more just picture, than I have seen any where, of the Union, with the relative connexion and dependence, of the King, Lords, and Commons. What more beautiful, and more grand, than this wonderful production of vegetative Nature? What image has been more consecrated by the pens of writers of all Nations? From the Cedar of Lebanon to the English Oak, it has furnished illustration to the most sublime, and interesting subjects;—Majesty and Strength; Beauty Fruitfulness, and Protection;—the Birds of the air have dwelling in it, the Beasts of the field find shelter under it, and man has the benefit of it, in all stages of its existence, whether standing, lopped, or hewn down.

When

When our native Oak is exhibited as a Type of the English Constitution, an Englishman must surely lose a great portion of his national good humour, before he will quarrel with the attempt, however untowardly the design may happen to be executed. For myself, I own that since the public notice has compelled me to reconsider and study this figure, I have discovered a propriety and beauty in it, which I never thought I could have bestowed.

It has improved upon me daily, and I am grown, like others, to think my own conceit an admirable one. I look with pleasure and reverence to this symbolical Tree. I am delighted with fancying the Lords and Commons to be put forth by its venerable old stock, a part of its own substance, intimately united in its various vicissitudes; bound to bear the same Storms, as well as to enjoy the same sunshine; flourishing round their parent to which they give ornament and shelter, and protecting those who fly to the antient stock for protection.

This imagery seems to me very happily to picture the union and dependence which subsists between the King and the two branches of the legislature; it gives peculiar satisfaction, because it represents to me the intirety,
and

and organization of the English Monarchy in its legislative function; and strongly impresses me with the persuasion, that the parts are bound in one common Interest, and that (as long as the parliament lasts) they must stand or fall together. It gives us only another view of the Idea expressed by the venerable *Hooker* (who has acquired an established Title to the Character of *Judicious*). *The King united with his subjects in parliament makes the very body politic of the Kingdom**.

According to my notion before sufficiently explained, this is the true way of considering the parliament; I mean, as a function of the Monarchy, a mode only of the Kingly power, a particular manner in which the King exercises his legislative Capacity, in his legislative Council. So the Attorney General, seems to understand it, when he correctly says, as above quoted, “ The supreme power, Rule “ and Government is vested in the King, with “ consent and advice in some cases, and with “ advice in all cases.” The present is the former case of *consent and advice*.

* Eccl. Vol. Book 8. I know that the 8th Book of Hooker’s Work is posthumous, and came to the Public through Persons, who were suspected to have taken Liberties with it; but it is sufficiently established, still to be called *his*.

Nothing

Nothing is more desired by all good subjects, and true Englishmen, than that there should be a good understanding between the King and his parliament; and I cannot conceive any thing more likely to predispose to such good understanding and unanimity, than the reflexion, that they are all parts of the same substance, Head and Members of the same body politic, and that (as long as the Parliament lasts) they must stand or fall together.

Such intimate union is more strongly represented in this metaphor, than it ever was before, to my knowledge; and I hope the image will contribute to fix this wholesome constitutional Doctrine, and make it more generally seen and felt. When such sound principles become more general, we shall have less reason to fear the Dangers, which are threatened by the opposite Notions, that would represent the Houses of Parliament, as distinct from the King, (coloured under the specious name of *balances*) with separate, and hostile Interests, always tending to counteraction, and sometimes to disunion and disorder*.

But,

* I have not now time to examine some similitudes of balances, and mechanical Powers, adduced by *Blackstone* and
S others,

But, alas! it occurred to me, that these *branches*, however goodly and beautiful, were still only secondary, and subordinate; *that*, perhaps, was not so much amiss; for the Houses of Lords and Commons, it must be allowed, are secondary and subordinate, inasmuch as they originate from the King, and farther, inasmuch as they are only of temporary duration, that is, for seven years, which period is most commonly *cut short* by a dissolution; but as the mind had before passed from the branches to the Houses, so now it returned from the Houses to the branches, and these were to be adapted to the temporary duration of the Houses by *lopping them off*. No sooner were they lopped off, than the consequence followed of course; *cast into the fire*, came in so pat, like *engrossing Death* with the Poet; and yet I recollect no other reason for it, than that the expression of *kewn down and cast into the fire*, came into my head, from reading an old fashioned Book, whose phraseology has not;

others, to illustrate the operations of King, Lords, and Commons. These are among the fancies suggested from extraneous systems of reasoning, wholly foreign to our Law, and, therefore, productive of misconception, and obscurity.

seemingly,

feemingly, made the same impressiion upon my Accusers.

Such I take to be the true history of this Metaphor, and I believe very many may be accounted for in the like way; being without much plan, or design, but arising from chance, and a succession of objects, and more the combination of words than ideas, the Ideas being very often suggested and controuled by the words.

But, notwithstanding this chance birth, I am not ashamed to avow that in my opinion these random strokes have given a feature to the Picture, that is as just and proper, as the former part, which we have before examined; and upon considering it again, it seems to me to need no apology. It was intended only to represent that, which every one knows, namely, that the Houses may be dissolved, and yet the King remain as much a King as he was before; of which there can be no doubt; indeed, how otherwise is a new Parliament to be called? The King has in him the same inherent Powers to call a succeeding Parliament, as he had to call, and dissolve the preceding one. It is true a considerable Portion of his State, and of his high functions is laid aside,

3

while there is no Parliament sitting, because, as it is expressed by our Law writers, and it has been before noticed, the King is never in such full state and dignity, as when he is at the head of his Parliament; when the branches are lopped off, the Tree is shorn of its Honors. But the state of the Branches is worse: the Tree remains, but they are cast into the Fire; that is, the King subsists and is capable, among his other functions, of calling a new Parliament; but the old Parliament is extinct, never to be revived, its Members being sunk into the mass of the People; the Lords, indeed, re-appear; and some of the Commons may perhaps be elected into the new Parliament; if they are, it is wholly in a new Character, their former political existence is quite irrecoverable.

I know it has been objected, (and indeed it is the gist of the Libellous imputation) that this figure can only be understood of a lopping off *finally*; and that the branches were meant by the Author, never to be renewed, and, say such objectors, if he meant they should be renewed, he ought to have signified, that the Tree would put forth new branches.

I agree,

I agree, that if the course of the argument had required me in this place, to give a precise idea of the Legislature being periodically renovated, I should have introduced some idea of such reproduction ; but, in this passage, I had nothing more to shew, than the mere capacity of the King to survive the two Houses ; I had no obligation to define, whether he survived them for an hour, or for ever ; the metaphor therefore is correct in stopping short, without conveying any idea of reproduction ; it is co-extensive with the argument. The objectors might, indeed, add, *uno avulso, non deficit alter Aureus*, to please their own fancy ; but it would be superfluous to the argument, and unnecessary, if not faulty, in the metaphor. I beg, therefore, to contend, that, by the laws of good writing, the metaphor ought to continue exactly as I left it, without any addition of the sort proposed ; and I further think, it stands in no need of the indulgence, allowed to all similes and metaphors, except only to mine ; for if the image of *lopping off* is right, the consequence of *casting into the fire*, or any other notion of destruction, appropriate to lopped branches, cannot be wrong. If persons take fright at such painting, they must charge it on
their

their own nerves, or their own taste, and not upon me.

But, supposing the metaphor itself may be defective, it is followed by an explanation in plain prose, which happens to contain in it the notion of reproduction, and therefore ought to have obviated this hasty objection ; I mean the instance of a recess, or dissolution of Parliament, which at once expounds what sort of a *lopping off* was intended, and in what sense, I meant to speak, when I said, the Tree is a Tree still.

The Kingly Government ; says the paragraph, may go on in all its functions without Lords or Commons : It has heretofore done so for years together, and in our times it does so during every recess of Parliament ; but without the King HIS Parliament is no more.

Can any thing be plainer than the sense of the Metaphor, accompanied with this Comment ? assuredly the Kingly Government may go on, without Lords or Commons, because one of its functions is, to bring into existence again those very Lords and Commons, and surely, *that* is a function which, in the very nature of it, is to be performed without *them*.

The

The Kingly Government in all its functions has been invidiously misconstrued; as if the author meant to say, the King could make Laws without the Lords and Commons; surely the Text does not bear that meaning, and most assuredly the Context gives the lie to it; for it had been before expressly * laid down that laws cannot be made without the advice and Consent of the Lords and Commons.

The functions here meant were those, which the King can *by Law* exercise, and not such as he cannot; what the King can, not what he cannot do; according to that axiom of our law respecting the Regal Government, *Rex nihil potest, nisi quod jure potest*. But the meaning is explained fully, by the example of *a recess of Parliament*? “*In our times it does so during every Recess of Parliament.*” This is so plain an example to controul, and expound the whole of the Metaphor, that I will not add one syllable more upon it.

Having said that the Kingly Government may go on without the Houses, the Paragraph proceeds to say that, the Houses cannot go on

* In page 11.

without

without the King ; *without the King HIS Parliament is no more.* To support this Position I might bring to your Recollection the difficulties, that fell upon the two Houses, during the illness of the King, to sustain their authority. They were enervated and incapacitated to do any one Act, except that of confessing and deploring their own incapacity, and calling upon the Keeper of the King's Great Seal, to apply that to an Instrument, for giving animation and vigour to the two Houses; *without the King HIS Parliament was no more.* None had so strong an impression of all those difficulties, as his Majesty's present Ministers; and they know that the King's Great Seal (with all the terms of contumely that were cast upon it) was the only Power, which could, consistently with the forms of the Constitution, restore the Houses to activity.

Notwithstanding the political capacity of the King is supposed by Law ever to be in existence, yet we find that, upon the failure of his natural capacity, his Parliament died with him; by the principles of our Constitution, on the death of the King the two Houses of Parliament become dissolved. It was found that many inconveniencies followed from this sudden

sudden dissolution, and therefore by Stat. 7 and 8, William III, Ch. 15, it was provided that the Parliament in being should continue for six months after the demise of the Crown, unless sooner prorogued or dissolved by the successor; so, you see, that by the Constitution and Law of the Land, upon the Death of the King, the Parliament died also; in truth because it was *his*; like his other Councils, as the Privy Council; and his Judges, who constitute his Council learned in the Law, but whose Commissions, as well as those of other Officers, are now kept alive by special Acts of Parliament, made to prevent the inconvenience of such a stagnation, as this failure before used to cause, in all the affairs of Government.

Before I take leave of this comparative statement of the nature and capacity of the King, with the nature and capacity of the two Houses of Parliament, I must remind you, that although we see, in point of fact, a Parliament sitting every year; and that, as soon as one Parliament is dissolved, another is *immediately* called, yet the Theory of the Constitution, and the Law of the Land do not require it; and when we consider a little how this matter

T

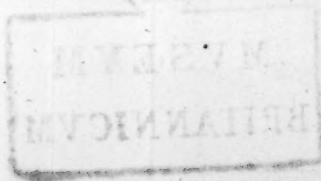
stands,

stands, we shall find, that my statement is more correct and conformable with the principles of the Constitution, than the notions of those, who have been so confident in the censure of it.

By the antient law of the Kingdom, recognised, or, perhaps, enacted for the first time, in some Statutes of Edward III. the King is to permit a Parliament to sit annually for the redress of grievances, and dispatch of business, *if need be*. These words had so little precision as to time, that some of our Monarchs omitted to call Parliament for several years; the last instances of this omission were in the reigns of Charles I. and Charles II. during twelve years of the former reign; and during the last four years of the latter. This occasioned some Acts of Parliament to be made, that more precisely enjoined the time of calling Parliaments. By Statute 16, Charles II. cap. 1, it is enacted, that the sitting and holding of Parliaments shall not be intermitted, or discontinued above three years at the most, and that within three years after the determination of one Parliament, writs shall be issued for calling, assembling, and holding another. At the coming in of King William, it was declared by the Bill of Rights,
Stat.

Stat. 1, W. and M. Stat. 2, ch. 2, that Parliaments ought to be holden *frequently*. Thus, it may be remarked, to the surprize of many, that at the time of the Revolution, the Constitution rather went backwards than forwards, as to this grand point; for instead of adhering to the precise words of the Stat. 16. Car. 2. the Parliament returned to the indefinite words of the Statutes of Edward III. that had been already found so inefficient, both as to assembling, and calling of Parliaments. But this omission was supplied in Stat. 6. William and Mary, ch. 2, by enacting (as the Stat. 16. Car. 2. had done) that a Parliament shall be holden once in three years at least; it further goes on to enact, that a new Parliament shall be called within three years after the determination of the former.* This is the last provision made upon this subject; so that, we see, by the Constitution, as it *now* stands established by law, it is *presumed*, that the Government of the Kingdom may go on for any length of time less than three years, either in case of prorogation, or dissolution, without a meeting of Parliament.

* Blackstone has jumbled these, not distinguishing between the provisions for the meeting of a Parliament, and those for the calling of a new one. Blackst. Vol. I. ch. 2.



If such is the Law of the Land, I beg to know what offence it is to say, that *The Kingly Government may go on in all its functions without the Lords or Commons*. If it did not go on, during the three years which the Statute of King William allows, and supposes to be proper for intermitting of Parliaments, what is to become of the Kingdom? Is it to fall into anarchy and confusion?

We know, indeed, that in point of fact, the Parliament is never suffered to be separated so long; but the reason of that is, the King sees there is *need of them more frequently*; he acts under the impulse of the Common Law necessity, and of the Statute of Edward III. and not under the obligation of the Statute of King William. He has no obligation but the annual want of money, and other affairs of the State; the annual taxes, and Acts of annual regulation. It is prudence and expediency which bring the Parliament so often together, not the obligation of any law.

Speaking, therefore, of the capacity of the King, as conferred on him by the Common Law, and recognized and allowed to him by the Statute of King William, I contend, that I

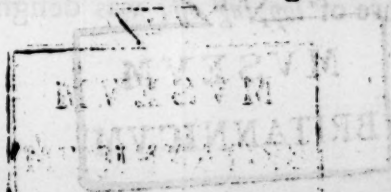
was



was warranted fully in what I have laid down, as to the King's constitutional and legal power and dignity, when compared with those of the Lords and Commons; and I contend that I was equally warranted in concluding with the following sentence;

“ The King, therefore, alone it is, who necessarily subsists without change, or diminution; and from him alone we unceasingly derive the protection of Law, and Government.

After it has been shewn, that there may possibly be no Parliament for nearly three years, and knowing, as we all do, that, during a recess, which is a great part of the year, we have none of the benefits of a Parliament, but that during the whole of those periods, the Executive Government never omits *for a moment* (as the Attorney General expresses it) to discharge its functions, in the administration of law, and in all affairs, civil and military; surely it is perfectly correct to say, that it is from the King *alone* we *unceasingly* derive the protection of Law and Government. And if the fact is so, happy it is for us, that a superintending Guardian, upon whom every thing dear to us depends for protection, should subsist without *change or diminution*, as the King does, who, in the



the eye of the Law, never dies ; and if he never dies he never begins to exist, and, therefore, it is very properly and correctly stated, that he *necessarily subsists* ; which can be said of no other part of the Constitution, the existence of every one of which is, as has been already sufficiently shewn, only *derivative*, and sometimes only *occasional* and *temporary*. Nor do I stand in need of contrasting the *duration* only of the kingly authority, with that of the Houses, nor of distinguishing between legislative and executive functions, in order to justify the expression, that the King *alone unceasingly* affords us this protection ; for the same is equally true even during the sitting of Parliament ; it having been already proved, that the King makes the Law by authority of Parliament ; and every one knows, that he executes the Law, by means of his Counsellors and Officers out of Parliament. In truth, as there is no political power in the land but what is exercised under, by, or from him, it is from him alone we unceasingly enjoy the protection of Law and Government, whether such protection is derived through the medium of Parliament, or of the other departments of the State.

Having as I conceive, fully established, that the figure of *lopping off*, was designed only to represent

represent the occasional disappearance of the Legislature, there remains nothing to be said, but upon the choice of the expression. This is a question neither of crime, nor of Law, nor of Politics; but a point of mere criticism and taste, in which every man has his own fancy. *Dissolution* is a metaphorical term, as well as mine, and much stronger, for it implies complete destruction and death, which, lopping off, does not. There is still a physical probability of reproduction in our Constitutional Tree, ever young and vigorous; but in the figure of dissolution there is left no hope whatsoever. Why the advocates of reproduction should tolerate the one, and yet persecute the other is unaccountable. But the *bellum philologicum* was ever waged without mercy, or reason. While I was thus martyred for two words of metaphor, persons were permitted, with impunity, to call openly for a reform of Parliament, that would soon *dissolve* the whole Government, root, and branch.

Such alterations in the structure of the House of Commons, I most sincerely deprecate, and abhor; such alteration in the Monarchy, as is imputed to me, I have not even supposed

posed, as I contend, much less recommended, or wished for ; all I recommend and express a wish for, through the whole pamphlet, is, *that the Constitution may remain, as it is now by Law established.* To which purpose I beg to observe, that the paragraph in the pamphlet, which follows the one contained in the Information (and which if inserted in the Information would have taken away all pretence for calling the other libellous) is in the following words :

Such are the principles and Constitution of the English Government, delivered down to us from our Ancestors ; such they may be demonstrated to be from the incontestable evidence of History and Records ; and such it is wished they should continue by nine-tenths of the Nation.

Here I have put myself, for the verification of what I had alledged, upon the evidence of History and Records, and upon the wishes of nine-tenths of the nation ; and I would ask, whether it can be believed, that I would vouch any of these testimonies to prove the matter imputed to me ! Records and History to prove that the King might reign without Parliaments ! and the wishes of nine-tenths of the people that
he

he should so reign! it is absurd in the very stating of it.

Most assuredly, I vouched these authorities, because I knew they would establish what I had laid down; I have in the present Letter adduced them at some length, and I believe the reader is satisfied that they *do* prove, what I have laid down.

But, if these authorities had not supported the Doctrines advanced in that Letter, I should, I think, be entitled to alledge this last paragraph as a plain and direct testimony, at least of *my Intention*, not to debase, discredit, and endeavour to pervert and subvert the Constitution, but on the contrary, as far as my abilities enable me, to represent it as I found it; and that, however ill I might have executed the Design, the Design was a good one; and the failure in argument and conclusion ought not, according to the mild and just Tenor of the English Law, to be made a ground for a charge against me of Libel upon the Constitution.

Before I leave this exposition, I shall beg the reader to ~~make~~ one experiment upon that

U

passage

passage of the paragraph, which is supposed to contain all the exceptional doctrines; it is merely to put the same sentiments into the plain language, which is well known, and constantly used, and then see, whether, when undisguised by metaphor, they are not truly constitutional and correct.

The passage with the Metaphor.

In fine, the Government of England is a Monarchy; the Monarch is the antient stock, from which have sprung those goodly branches of the Legislature, the Lords and Commons, that at the same time give ornament to the tree, and afford shelter to those who seek protection under it; but these are still only branches, and derive their origin and their nutriment from the common Parent; they may be lopped off, and the tree is a tree still; shorn indeed of its honors, but not, like them, cast into the fire. The Kingly Government may go on in all its functions without Lords or Commons; it has heretofore done so for years together, and in our times it does so, during every recess of Parliament; but without the King, his Parliament is no more. The King therefore alone it is, who necessarily subsists without change or diminution; and from him alone we unceasingly derive the protection of Law and Government.

The Passage without the Metaphor.

In fine, the Government of England is a Monarchy; the Monarch is the *caput principium et finis* of the High Court of Parliament, or *Legislative Council* of the realm, the Lords and Commons, that at the same time *reflect dignity on the King, and afford protection to the subject*; but these are still only a *Council*, and derive their origin, and *authority from the Monarch*; they may be *dissolved*, and the *King is a King still*; *deprived*, indeed, of *this part of his dignity*, but not *losing his state*, like them, *who become private individuals*. The *Executive Government* may go on in all its functions without Lords or Commons; it has heretofore done so for years together, and in our times it does so, during every recess of Parliament; but without the King, his Parliament is no more. The King therefore alone it is, who necessarily subsists without change or diminution; and from him alone we unceasingly derive the protection of Law and Government.

I think, nobody, who possesses any information will doubt of the passage, thus altered, being clear of all exception. Where then lies the difference between the two? The sentiments being the same, the difference must be in the words; and where has the poison been supposed to lurk but in the words *lopping off*? to which, *dissolution* is thus admitted to be a complete antidote and cure*. The result, therefore, of this criticism, which was instituted for the vindication of parliamentary privilege, ends in this; that the two Houses of Parliament may be *dissolved*, but may not be *lopped off*. Whether this is much of an acquisition, either in rhetoric, or politics, I leave for others to determine.

I have now gone through the whole of the Charge, which was converted into a Criminal

* Upon the whole, I seem to have been judged, not, by my own design, but by the reader's expectation; thus, I have used words, that fully conveyed, what I meant to convey, viz. the dissolution of the two houses. and the members being reduced to the state of private individuals; but, says the Critic, you ought also to shew, that the houses may be reproduced; for it is not correct to speak of the *end* of the Parliament, the end of a king's reign, or the end of the year, without adding something of the commencement of a new one. This seems a most excellent rule for misunderstanding Authors, and would soon put an end to all writing!

Proceeding, and I hope the Reader will think that not only every imputation of criminal intention, but every critical animadversion, upon the matter and wording of this paragraph, is completely answered; and that the Author of the *Thoughts on the English Government*, stands before the Public, as a Writer and a Man, as clearly as before this Transaction, with the addition of this advantage, beyond most writers of the day; that, having been put to the *Question* by the Malice of numerous, persevering, and sagacious Enemies, the Experiment has ended in the full justification of his Writings, and a complete refutation of the Accusation brought against them.

In this vindication, you perceive, I have not made any Account of the Verdict of Acquittal; I have done this for reasons, which appear to me, at least, to be sound. In matters of fact, wholly or principally arising from *oral* Testimony, a Verdict of Acquittal may be a sign, that, upon hearing all which was produced, no Guilt could be proved; and persons out of doors, who have not heard what the Jury have heard, ought to take the Verdict for conclusive; that is, it should be taken, at least as negative Evidence

Evidence of Innocence, even in the most suspicious Cases. This is so understood by the Public. The most guilty Men have, accordingly, a Courtesy to boast of an Acquittal by a Jury; and this they never fail to do, however contrary to the secret *Conviction* of their own Minds. But in a Matter like this, where the Question is upon the Meaning of a Passage, and the whole Evidence may be carried in the Pocket, and any Man in the Kingdom may try the Cause at home, quietly by his fire-side, and Judge for himself, what weight will any one allow to the Verdict of a Jury?

I have adduced all the above Authorities to enable every Man to Judge still more minutely for himself; I wish the Gentlemen of that Jury would read them, that *they* may also know, (which, perhaps, they do not yet), how many good Precedents there are for their Verdict.

I should acquaint the Reader, that most of the disquisitions, which I have just gone through, are as new to the Jury as to him; for on the Trial of this Cause, none of these debateable Points were entered into by the Counsel on either side; for the Jury were told there was no dispute, what the Constitution

was ; but the Single Question before them, as well as I could collect, was upon the meaning of *lopping off*, and the words that follow to the End of the Paragraph. No more, therefore, of the above discussion was entered into, than was absolutely necessary to explain the Meaning of this Passage ; and this was very little, as the Reader may Judge from what he has just perused. As the Verdict therefore did not proceed upon all the Points I have just been canvassing, and as it would not, in my opinion, be of any weight if it had, I have forborne to adduce it.

My opinion upon this popular part of our Constitution is the same as that entertained by every true Englishman ; namely, that it is the best Jurisdiction for trying a matter of Fact. But my reasons for concurring with my Countrymen in this approbation, may, perhaps, be singular ; it is not because I think there resides in Twelve Men exercising this particular Function any superior Capacity to discharge it (the supposition would be absurd) but because the People of this Land in general have, from the earliest Time reposed a Confidence in this Tribunal, and ascribed to it a certain species of competency,

competency, they have not ascribed to any other. Thinking it a Tribunal of their own, they adhere to it with a selfish affection ; and readily allow the Verdict of a Jury to be an estoppel to the whole Kingdom, in the Matter in Question. This is a Predilection which is fortunate for the Country. It renders the Administration of Justice more easy and satisfactory ; and relieves the Judges from a Load of responsibility, that would otherwise fall upon them, and might overwhelm them. It is fortunate for the Institution, that these venerable persons, who are able, from their situation, to give it most facility, are most interested in maintaining it, in all its vigour.

Having delivered this opinion, I hope I may be allowed to express my private *feelings* as to this popular Institution ; our opinions as to the general Utility of an Institution, and our *feelings* as to a particular application of it to ourselves, may be different. I profess, that if I was conscious, I had committed Murder, or Sacrilege, or Forgery ; That I had attempted to assassinate the King ; Endeavoured to stir up sedition ; *written a Libel upon the Constitution*, or committed any other Matter or Thing of a criminal Nature, I should desire, above all Things to be tried by a Jury ; because I should
fear

fear, I had no other Chance of being deemed innocent and escaping Punishment. In all these Cases, I should indulge hopes from the Lenity, or the Party-affections, or some difference of Opinion, or of Sentiment among the Jurors, which lead generally to a Decision on the favourable side of the Question.

In no Case, has the Trial by Jury been claimed with so much spirit, as in that of Libel; and this, I suppose, because the benefit of such trial is of great importance to political and party offenders; but for myself, being conscious that I was neither one nor the other, and thinking I was entitled to something better than the *Chances* above alluded to, for an Acquittal, my inclination was, that the Gentleman, who, unfortunately had to answer for my performance, should renounce this grand benefit, and put himself upon the judgment of the Court; having already had more than enough of popular Criticism, and preferring, as I did, that the Chief Justice himself and his Brethren, should pronounce upon the doctrines contained in the whole Letter, whether they were or were not contrary to Law. But the Law-advisers (as I am informed) over-ruled this wish upon reasons of their own, and it went, in the usual way, to a trial and verdict, which I have
shewn

shewn, prove nothing to the grand Argument of my Letter. I have, however, since resolved, that should the present, or any other Writings of mine, be brought into question judicially, and I should be the Defendant, (as I most probably shall), I will not be over-ruled in this Point; and I do here undertake, more especially with regard to the present Letter, that, in such case, it shall, by some Mode or other, be brought to the Decision of the Judges, and shall not go to the Verdict of a Jury. I do further beg and declare, that every Sentence and Word in my former Letter may be considered as now resaid and republished; and I do hereby re-say and republish the same, and do commit them, together with this, to the same Tribunal; and if the Opinion of the Judges, formed on the rigid Principles of Law, shall not be with me, and if every thing I have said in this and my former Letter, shall not be sanctioned and confirmed, I shall be content to pass for a Libeller; which is more, I venture to say, than any of the pretended Patriots would hazard, however boldly they may talk of their innocence.

Having gone through the Defence of such parts of the Letter, as were made the subject of a criminal Charge, it may be expected I should

should say something to refute the desultory Attacks, that were aimed from several Quarters, while this Pamphlet was before the Public. With regard to some of these, that are most prominent, I will not refuse to give so much Answer as will shew, that I have at least considered them ; but as these Attacks consisted only of general Assertions, and Imputations, without Argument or Proof, I must beg the Objectors to excuse me, if I do little more than re-assert my former Positions.

To those who quarrel with my Position, that nothing new was added to our Constitution by the Transactions at the Revolution, except that our King should in future be Protestant, I repeat the Assertion ; I refer the Objectors to the former Authority, namely the Bill of Rights, for its verification ; and I call upon them to shew *their* Reasons or Authority to the Contrary, which they have not yet done.

I agree with those Objectors who allege, that the Points established by the Bill of Rights are thirteen, and not twelve, as I had incorrectly stated in my letter. The Reason of my so stating them
was

was this. The Points enumerated in the former part of the Statute, and called in the Margin *Heads of Abdication*, being the Infractions of the Law by King James, are twelve in Number. The twelve Points are afterwards again enumerated, in order to their being enacted, and are called in the Margin, *The Subjects' Rights*, and at the Close of them is added a thirteenth for *the frequent holding of Parliaments*.

I admit, therefore, that I was incorrect in calling these Points twelve only, and were I to state them over again, I should call them thirteen. Whether it was by mistake, or upon deliberation, that I followed one Enumeration and not the other, I do not now recollect; but if it was the latter, it was not wholly without grounds. For the twelve Points, though not new, were newly and really secured by that Statute, and have their Effect even at this Day; but the thirteenth was a Provision of less Efficiency than former ones on the same Point. I consider it, therefore, as not giving a new security for frequent calling of Parliaments, as it purported; and it has been since

superfeded by Statute 6, William and Mary, chap. 2, all which I have shewn before*.

This Provision, therefore, for holding Parliaments, is now wholly obsolete, and the only one of the Bill of Rights, that has become so; I had therefore some Ground for paying less regard to it than to the others. I hope this is an answer to those, who would insinuate, that I omitted it because my system was adverse to the holding of Parliaments. Surely this was an ill-advised Piece of Criticism, when I referred the Reader to the statute where he might instantly detect the omission! I wish this had been spared!

As little foundation was there for imputing to me, that I spoke of the Revolution itself with slight and disapprobation. But some Gentlemen are not satisfied, unless an Author is quite as mad as themselves. It is not enough for them, that I said, the Reformation and Revolution “ were memorable transactions conducted in a way, that was truly English; that the Actors in them proceeded with their Remedy, as far as the

* Vide Ant. pa. 139.

“ disease went, and no further ; and that they
 “ never suffered themselves to lose sight of
 “ this main rule, that what they did, was to
 “ preserve the ancient Government, and not to
 “ destroy it *.” It was not enough to say of the
 Revolution, that it was “ a precedent regarded
 “ with reverence, and with gratitude towards
 “ those who made it †.” Such sober and chast-
 tised commendation does not, forsooth, suit
 with these events ; you must off with your hat
 and huzza ! Glorious ! or be suspected of
neivism, at least, be *suspected of being suspicious*.
 These gentlemen have so pampered their pa-
 lates with the provocative fauces of revolution
 dinners, that plain wholesome meat will never
 go down with them ; simple approbation is
 quite maukish ; and if you do not give them a
 panegyric, you might as well write a satire, for
 they will equally consider you as an enemy.
 I hope I am not given to *canting* upon any sub-
 ject ; but as I find it exacted by these gentle-
 men so rigorously, I shall be careful, as rigo-
 rously to guard myself against *canting* about
 the Revolution.

* Letter 1, pa. 25.

† Ibid. 40.

Others have carped at me as endeavouring to make *the King every thing and the People nothing*; which seems, on the face of it, to be the most unpromising of all the slanders against me; for the letter is addressed to *the People of England*, and it tells them *, that their opinion, though collected only from implication, and silence, is of such influence and weight, that all political men must bow to it; and that no designs, however well supported by party strength, or however urged by force of argument, or ornament of speech, can succeed, unless the people at large approve them. It is true, I ascribed all this to the *Quiet good Sense* of the People; but what those gentlemen call the People, is their own train of clamourers, actuated only by *noise* and *nonsense*; these in truth are *nothing* though they are not made so by any thing in my letter, unless indeed by the influence of its good principles; I pray God, *that* part of the People may still continue to be nothing, and that the King, supported by the *Quiet good Sense* of the other part, may be *every thing*, as he now is, and has long been. The King and the sensible part of the nation united will be

more than a match for all the machinations of the disaffected.

The other foolish opinions, and mischievous designs, which a malevolent party were pleased to impute to that Letter, and the writer of it, I do not think it worth while particularly to answer, or even to mention. I have already done more, than many will think, I was under any obligation to perform. According to the expectations of some gentlemen, every writer must not only express the sentiments he entertains, upon the subject immediately under discussion; but he must further set out negatively, and protest against all the conclusions, inferences, and corollaries, which, by possibility, may be drawn from what he has said, whether fairly or not. I am neither able nor inclined to gratify such unreasonable expectations; but I am content once for all, to make, in this place, an express declaration of my sentiments, on certain leading points, although they may be collected with sufficient plainness from what I have before written.

I do, therefore, declare my opinions and sentiments to the extent of the following propositions.

I. That

I. That the English Constitution as Established by Law, and as we see it in daily practice, is the only one, under which, according to my opinion, true Liberty can be enjoyed with security; and that I mean to defend this Constitution, by all the means in my power, against those, who would make any Change therein, whether so as to give it an inclination towards absolute Democracy, on the one Hand, or towards absolute Monarchy on the other.

II. That according to the forms and principles of this Constitution, the English government is a Monarchy, the supreme Power being vested in the Crown, to be exercised by the King, according to the Laws and Usage of the Realm; and no power or authority whatsoever can be exercised by any Person or persons whatsoever, but such as is derived from him; and that all the People of this Land are his Subjects, and owe him and none other, fidelity and allegiance.

That the King, so possessing the supreme Power, is the Maker and Executor of the Laws; which he performs in that Mode, and by those Instruments, which the Law and
Usage

Usage of the Realm have assigned him, either in or out of Parliament.

III. That the Parliament consists of the King at the Head of the Three Estates of the People of this Realm; which Three Estates consist of the Lords Spiritual, and the Lords Temporal, sitting in the one House, and the Knights, Citizens, and Burgeſſes, sitting in the other. That the King is required by Statute to hold a Parliament, at least once in Three Years; and if he holds it more frequently, it is of his own Will and Pleasure, for aid and advice upon the Affairs of the Nation.

IV. That the King's Subjects sitting in Parliament are his Subjects equally and alike with his Subjects at Large; and that all Notions of any Co-ordination of either of the two Houses, or both together, with the Sovereign on the Throne, is contrary to the Law and Usage of the Realm; and that such Expressions as the "Three Estates," or the "Three branches of the Legislature," reckoning the King as one, give Countenance to
this

this notion? of Co-ordination, and have a tendency towards Republicanism.

V. That the Revolution of 1688 ought to be approved by us, because it was a parliamentary Settlement; which is, and ever has been, the only Constitutional Authority for confirming the possession, and limiting the Descent of the Crown; such settlement being, by the Law of the Land, a complete bar to all Claims, or pretensions whatsoever. That the Settlement then made, was justified by the Occasion; being in *Defence* of our Ancient Rights, Religion and Liberties; but it is a precedent so far only as it goes; and it can by no means be adduced to justify any Arbitrary and *Voluntary* Change in the person of the King, or in the form of the Government, made in pursuit of Speculative improvements, and on pretence of any right in the People to make such Changes, according to their supposed sovereign Will and Pleasure; and that no change whatsoever in our Laws and Government can be made, but by the King, with the Authority of Parliament.

VI. That

VI. That to cite the Revolution in order to agitate the Minds of Men on that subject, in the present times, when there is no attack nor apprehension of any, from the Crown on our Rights, Religion and Liberties, but when there is great apprehension, that the Excesses of Democracy may injure the just and legal Authority of the Crown (which is necessary for protecting our Rights, Religion, and Liberties,) is a gross abuse of that wise Measure, an insult to our present Sovereign, and an encouragement to the machinations of the Seditious and Disaffected.

VII. That any Right of a King of England to exercise any Authority, paramount to, and in prejudice of, the Known and Established Laws of the Land, by Virtue of any supposed Power inherent in him as a Monarch, according to the opinions of * *Filmer* and his followers; or
any

* Amongst other Imputations upon me, it was said, that mine were nothing more than the opinions of *Sir Robert Filmer*; and some good People believed they had seen MY TREE, or something like it, in *Filmer*. They possessed more reading of this sort, than I had; for I protest, so little skill had I in the science of Constitutions, beyond the Text of our Records and Law books, that I had never read, or seen

any supposed Right inherent in the People, to make or un-make their Governors, or change their Government, according to the opinions of *Price*, *Paine*, and their followers, are

Filmer's Patriarcha when I wrote the first Letter. I have since read it; and it appears to me very informing and sound, as far as it gives an account of the Constitution, from History and Records; but when he comes to the Close of the Book, he runs wild upon Aristotle's definition of a King, and Kingdom; and concludes, that our King must possess the Powers and Prerogatives ascribed to a *King* by that Philosopher, as inherent in him, and paramount to the ordinary Practice of the Monarchy; by Virtue of which, he may make, suspend, or dispense with the Laws. This is the only part of the work brought into question by *Locke* and others, the rest is founded upon Records and History, and is clear of all exceptions, as appeared to me. *Nota bene*, I saw no *Tree* whatsoever.

Sir Robert Filmer's Antagonist, *Mr. Locke*, is usually considered as the Leading Authority for principles of true Freedom, in the science of Government; but it is worthy of examining, whether, in his Chapter on *Prerogative*, there may not be found almost as much Latitude for arbitrary Power, as in *Sir Robert* himself. *Mr. Locke* wrote most of his Treatise, while proscribed, and in Exile. This gave a particular turn, no doubt, to his speculations; he seems, however, amidst the Reasons he adduces for overturning a Government which he disliked, to have at hand some very sound Principles, for supporting

are equally contrary to the Laws and Constitution of this Realm; the first is incompatible with a limited Monarchy, and the latter with any Government at all.

VIII. That the Notion of a *sovereign Will* in the People was never admitted by any wise or good Men; it is utterly false in principle; it is both Anti-political, and Anti-moral; it having been always the Endeavour both in politics and morality, to subject the propensities of the *Will* to some certain rule suggested by the *Understanding*; whence the obligation of private Duties, and the Restraint of Public Laws: and we cannot but remark the absurdity, that the most violent Declaimers against the absolute Will of a single Person, are the greatest advocates for obedience to the absolute Will of many; as if they thought the Civil Liberty of Individuals was better secured by increas-

supporting, in all its Vigour, the one which he approved. This is not uncommon with the greatest advocates for freedom. A Change of Circumstances calls into Action a different set of Opinions; Thus Whigs become Tories, and Tories Whigs. I should wish no better Champion than *Mr. Locke* for our Establishment in the present times; I am sure, he would silence the Madmen, who daily cite him, as an Authority for Sedition and Anarchy.

ing the number of those, who have power to destroy it. That there is no such sovereignty in the people of this Country; but they are, on the contrary, all, and all alike, subjects to the King, and he alone is sovereign; and moreover, that as a Name of Authority, or as possessing any power whatsoever, the people of this Country are not known or recognised, nor are they ever considered, or mentioned by the Law, but as the King's Subjects only. The Assertion of such sovereign Will, or Authority in the People of England, is unfounded, unconstitutional, and illegal, and has a tendency to excite Rebellion.

IX. That the Notion of the King receiving his Power from the People is unknown to the Law, and Usage of this Realm. For, by the Law and Usage of this Realm, a King of England can only be made by himself, or some other King, with the Authority of Parliament*;
fo

* The position, that a King of England, in case he does not come in by descent, is made by himself, or by some other King, ought to startle nobody, when it is considered, that a settlement of the Crown has no force, unless it is made in Parliament; and the King being the Maker of the Law, as has been proved, he must, of course, make the limitation and settlement

so the Prince of Orange made himself King ;
 so came the Hanover succession, and so is the
 Law

settlement of the Crown, whether upon himself, or upon others : Further, in order to such Parliamentary settlement, where the descent is interrupted, there must be previously an acceptance and assumption of the Crown. The accessions of Henry IV. of Henry VII. and of William III. all proceed upon this principle. The following is a short history of the last of these transactions, as taken from the Bill of Rights. It appears, that King James having abdicated the Government, and the Throne being thereby vacant, the Prince of Orange, by the Advice of the Lords Spiritual and Temporal, and divers principal persons of the Commons, caused letters to be written to the Lords Spiritual and Temporal, being Protestants, and to the Counties, Cities, and Boroughs to meet at Westminster, on the 22d of January, in order to an establishment ; at which meeting they resolve on thirteen points which they call the subjects' rights ; and, expressing a confidence, that the Prince will perfect the deliverance so far advanced by him, they resolve, that he and the Princess be and be declared King and Queen, and pray them to accept the Crown, upon which their Majesties did *accept* the same, and they thus reigned, as the Statute expresses it, on the Throne of their Ancestors. Thereupon their Majesties were pleased that the Lords and Commons being the two Houses of Parliament, should continue to sit, to which they agreed. The Throne thus being full, and the Parliament legalized ; at a subsequent day the above Transaction is recited in the Statute, since called the Bill of Rights, and the

Law declared in the Act of settlement *. That although the King is not made *by* the People, he
is

* Vid. ant. p. 61.

the Lords and Commons pray his Majesty that for the ratifying and confirming all that had been done, by the force of a Law made in due form by authority of Parliament, it may be enacted, that the Crown and Regal Government shall be, and continue to their Majesties; the said Lords and Commons in the name of the People submitting themselves, their heirs and posterity, to them for ever: all which was by their Majesties, by the authority of Parliament, declared, enacted, and established.

Now, according to my understanding, no part of these transactions, previous to the enactment in Parliament, can be considered as conferring the Crown, unless it is the *acceptance* by the Prince and Princess. The framers of the Statute seem to have been of that opinion, for immediately upon that, they drop the title of Prince and Princess, and use that of *their Majesties*. Indeed, if they had not the Crown by their own acceptance and assumption, I know not how they could have it; for the Lords and Commons, who prayed them to accept it, might indeed so pray, and so might any other body, or bodies of men in the kingdom; but they had no power to give, to constitute, or appoint; they were only Lords and Commons, assembled at Westminster, and are only so named in the Statute, not the Lords and Commons in Parliament assembled; and, indeed, if they had been so, they had, by the Constitution, no right to give the Crown.

It follows, therefore, as the Lords and Commons, could
only

is made *for* them, as appears by his Coronation Oath ; which is the original Compact, and the
only

only tender, not confer, give, or constitute, it was the acceptance and assumption which made the Prince of Orange King ; he was thus in a situation to legalize the Parliament, and make himself King, by authority of that Parliament. This proceeding was taken as a model, in Statute 6 Ann. c. 7. which, as has been observed, makes it penal to declare any opinion, that the King cannot limit and dispose of the Crown with the Authority of Parliament.

There is not a trace of any thing like election, in this proceeding ; a King of England comes in upon a higher title ; his power is too great to be conferred by the hands of his Subjects ; yet too dignified to obtrude itself without the invitation and tender of a free people ; and too mild to enforce its establishment, but by the advice, consent, and authority of his Parliament.

The document, upon which I proceed, is the Bill of Rights ; its principles, its language, I have all along adhered to, and shall continue so to do ; it gives a firm footing for establishing Monarchy, and for exposing all the fashionable notions that are vented as Revolution-principles. I have in my former letter, recommended the reading of this valuable statute ; and yet, I dare say, notwithstanding the reasons I have urged, there are not now ten persons in the Whig Club, who ever read the Bill of Rights, from the beginning to the end. I do not wonder such persons represent me as a Tory ; when they do not know upon what principles *they* ought to be Whigs.

These

only one, between King and People, known to the Law, and Usage of this Land.* That the only department of the State, which appears to receive its Power from the People, is the House of Commons: they are indeed *appointed* by the will and pleasure of their Constituents, but

I believe, these Gentlemen, and I, do not mean the same thing, when we speak in praise of the Revolution. In this famous transaction, there were two critical passages; there was the pulling down of the old Government, and the settling of the new one. They feel it, I suppose, more suitable to their disposition, to triumph upon the former occasion; and they never cease upbraiding our Kings with the sad example of poor James; I am rather gratified in contemplating the settlement made in King William, accomplished with so much good sense, wisdom, and moderation. They like the Revolution, I like the settlement; they like vacating the Throne, I like establishing it. With these different partialities we must continue, as we are; they are Revolution Whigs, and I am a settlement Whig; or, if you will, a settlement Tory. The settlement was concluded with the concurrence of the Tories and Churchmen, and therefore it is, perhaps, that the persons alluded to, commemorate it with less cordiality, than the other. After treating the Bill of Rights as a Tory-measure, the Gentlemen will be a little more puzzled, how to give me a denomination.

* Stat. 1, Wm. & M. ch. 6.

the authority they exercise is from the King, as his Counsellors. The House of Commons is, therefore, made both *by* and *for* the People; upon the King's Summons and Proclamation, but not otherwise; and they seem, therefore, to be more amenable, to this supposed Will and Pleasure of the People, than any other person or persons in the State.

X. That those who indulge in the speculation of all power originating from the people, ought to conclude, from the experience of a Monarchical Government continuing in this country, for so many centuries, that all such power has immemorially and irrecoverably passed (no matter how or when, but has passed) out of the People, and has become, and now is unalienably vested in the Crown; to which the People of this Land, they and their heirs, for ever are subject. That now by the law and usage of this Realm, the People at large have *inherently* and *originally* no political power whatever; that what is occasionally imparted to them, is derivative from, and exercised in the name of the Crown; in this manner they have their share in advising and

Z

assisting

assisting the Crown to execute in detail the functions of the supreme power ; that, otherwise, in public affairs, the People neither have, nor ought to have, any thing more than an *Influence* ; the influence of their opinions and their wishes ; this influence receives consequence from the Civil Rights possessed by the subject.

XI. That although the People of England have no political power *inherent* in them, they possess Rights, Privileges, and Liberties *inherent* in them, as English subjects ; these are secured to them by the Laws, and Usages of the Realm ; and the King is bound by his Coronation oath to protect them. Among these Rights, they are not to be affected in their Persons or their property, but by known Laws, and no new Law is to be made by the King, but in Parliament. They have an inherent Right by their Representatives to become, under the King's Writ, his Counsellors, to advise and consent to the making of such Laws. They have a right to express their opinions on the conduct of those, who exercise power and authority under the King, whether

ther in or out of Parliament; they are entitled TO FREEDOM OF DISCUSSION, and FREEDOM OF THE PRESS, within the bounds prescribed by the Law.

XII. That *Private Rights* and *Civil Liberty* are the great end of all free Governments; and *Public Rights* and *Political Liberty* only the means for securing the former; the former are a positive good, and worth improving to the utmost; the latter are only relative, and not worth improving beyond their relation to the former; they are often indeed a positive, though temporary evil. That it is absurd to push the means beyond the ascertained power of producing the end, and more so to hazard any of the end; by tampering unnecessarily with the means. Thus we know, that the share of power occasionally delegated to the People by the Crown, coupled with the influence, and the Rights Privileges and Liberties inherent in them, as English Subjects, has been sufficient to preserve their present freedom; but we do not know whether an increase of this delegated Power may not endanger that influence and those Rights, Privileges and Liber-

ties. which it was meant to improve. That the projected Reforms of Parliament are among these hazardous experiments ; that it is to be apprehended such proposed increase in the number of Members in the House of Commons, would be highly dangerous to the whole frame of the Constitution, and lead directly to Republicanism ; a form of Government very unfavourable to *Private Rights* and the *Civil Liberty* of the People at large, which are usually neglected or sacrificed, amid the struggles, and agitation excited by ambitious Men about Political Franchises, and the possession of Public Authority.

XIII. That the natural *Influence* of the People of England has such an effect upon all the operations of the Government as to be, of itself, without any portion of Political Power of their own, sufficient to secure them in all their Rights, Privileges and Liberties ; for it is seen, that the King, and those who exercise Power and Authority under him, whether in or out of Parliament, never can, with safety or success, conclude a Measure which is not approved by the general opinion and wishes of the People at large. All combinations of Party
and

and all schemes of Great Men sink to nothing when the known voice of the people is against them. It was in this manner, that Mr. Fox's India Bill failed; this voice had its influence, when the King, on that occasion, dissolved the Parliament, because the House of Commons was not in Unison with his Ministers: a recent example in the memory of us all, which strongly shews, that while the Constitution has its due operation, the sentiments of the People of England will ultimately prevail; that they sometimes need the help of the prerogative to give them effect; and that the People know the value of the King's Authority, and will support it, for their own protection.

XIV. That the House of Commons are the Petitioners, Advisers, Consentors and Advocates with the Supreme Power in the State, on behalf of the third Estate of the Realm, the Commons at large; and it is a reliance on their discharging these duties, as they ought, that creates in the People a confidence in the Government, and an assurance, that they shall continue to enjoy all their Rights, Privileges and Liberties; that the Privileges granted to the Commons by the King at the commencement of every new Parliament, are
granted

granted in respect of their representing the Commons at large ; *their* Privileges are, therefore, *our* Privileges, and we are bound to uphold them as such. It follows, however, that when a House of Commons shews a selfish and factious disposition to exercise any part of these privileges, for the supposed dignity of the House as a body, to the Prejudice of the Rights, Privileges or Liberties of any private Individual, they are guilty of gross breach of confidence ; first in abusing the Power of the Crown intrusted to them for special purposes ; secondly, in betraying the trust reposed in them by their Constituents ; such conduct will always tend to lessen the character of a House of Commons ; and, if continued, would level it, in point of Estimation, with the most ordinary popular assembly in the Kingdom. Such a House must be dissolved by the King, that the Electors may have an opportunity to chuse persons more worthy the Confidence both of the Crown, and the People. Thus each Parliament stands or falls by its own character ; and whatever that may be, the Institution, in the abstract survives, unimpaired and untainted, to be called into action as occasion shall

shall suggest. Whenever *privilege* changes its Nature and begins to assume the activity of *Prerogative*, it must be watched, as such, with jealousy.

XV. That the claim of *Universal suffrage* and *Annual Parliaments* has no authority from the Form, the Practice, or the Spirit of the Constitution; and it is not less false in Policy, than unfounded in Law and History; such an alteration of the structure of the House of Commons would, no doubt, give it an ascendancy dangerous to the Monarchy, and soon enable it to assume the exercise of the supreme power. We have seen, that the House, even in its present structure, was able to do this in the last Century, and to suspend the Constitution for twenty years, which none of our Kings have been able to do for an hour. That no Government is so unfavourable to Civil Liberty, as that of a Domineering Popular Assembly, for it is restrained by none of the ordinary sanctions of conduct; no Responsibility, no Punishment, no Compunction, no Shame. In our Constitution, we have all the benefit of a Popular Assembly, without its faults;

faults ; the House of Commons is under controul ; it may be dissolved, if it runs into excesses ; and had not Charles I. parted with this Power, he might have saved the Monarchy. As a popular Government is the worst species, so that of a single Person is the best for Civil Liberty ; the best of these is a Monarchy limited by known Laws, and practised as ours.

XVI. That the Doctrines of *Universal Suffrage* and *Annual Parliaments*, and the earnestness shewn by certain societies to propagate an extraordinary love of Liberty, a disrespect for Kings ; an aversion to Nobles, and the Clergy ; and a hatred to established forms of Religion, have all a tendency towards, and are, in fact, so many different attempts to introduce, *Arbitrary Power* ; the *Arbitrary Power* of the Mob, to be exercised by the fanatical Demagogues who lead them ; an arbitrary power more furious and inexorable than that, which any single Despot would have Courage or Ability to Exercise. That seeing, the Constitution was never overturned or suspended, but by democratical

mocratical Excesses, there is reason to conclude, that it is more liable to danger from disorders of this kind, than from those of any other ; and this being the disorder of the present time, we should employ all our vigilance to counteract it ; Democracy is the *Damnable* and *Detestable Doctrine* of the present day ; and all good subjects should abhor, renounce, and abjure it. That there is no danger at present from any other unconstitutional or illegal incroachment ; notwithstanding the Cry attempted to be raised by some, which is only to draw off our attention, while the rest of the gang are breaking in at another Quarter.

XVII. That a Democratical Government, is Government in a state of Derangement, labouring under a feverish, Malignant Disease. Its intellectual endowments are only shewn in deliriums, and sickly wandering of the Imagination. The Will is always predominant, and in every operation of it, you see nothing but Caprice, Injustice, Ingratitude, and every passion of the worst Character. This Debility of the Mind and Body is brought on by Demagogues tampering

A a ing

ing with the Constitution ; and the Remedies they are obliged, for their own safety, to apply, only inflame the Disorder. If the Body makes an effort to perform its functions, it is only restlessness and not activity. The Miserable Patient turns from Project to Project for relief, but finds none ; and those who live under it are in constant agitations, fears, and jealousies. That a Monarchical Government is Government in a State of Health. The Body answers to all the influences of the Mind upon it, and the Will is in perfect Subjection to the Understanding. All its functions are performed with Order and with Ease. The Result is, Activity and Vigour, in all its Operations ; Tranquility and Repose, and Confidence in all who live under it ; for being best able to protect itself, it gives the best protection to the People.

Moreover, Democratical Governments, like a Disease and crisis in the body, are of short Duration. History shews, that all Governments, of any long duration, have been Monarchies ; and that Republics have risen up, only at intervals, beginning, continuing, and ending, with convulsions of a temporary Nature. Judging from Experience, and History, we might conclude that Monarchy is the *Natural state*

state of society, and Democracy an artificial and forced one, notwithstanding the speculations of Philosophizing Politicians to the Contrary. Accordingly, Democracy is able to provide less for the benefits of Government, and less against the corruptions incident to it. Every thing that is evil in a Monarchy is multiplied a thousand fold in Democracy; and many Evils exist under the latter, which are not known in the former. Extravagant Expenditure, oppressive Taxes and Forced Loans—Foreign Wars, Domestic Insurrections, Violations of Civil Liberty, and Private Property; Peculation and Corruption; Ambition, and Bickerings of Public Men; Fanaticism, Immorality, Irreligion—all such Evils and many others, are Fomented and Cherished by the very Nature of Democracy; they make a part of it, and are the Instruments by which it performs most of its Operations.

XVIII. That the Terms *Legislative*, and *Executive*, and the method of dividing the Supreme Government of States, into legislative and executive, are inventions of philosophizing Politicians; they have lately been abused by the Jacobinical Subverters of all Governments, who maintain the notion of the Le-

gislative having a Supreme Controul over the Executive, because it represents the People; and have thence deduced the dangerous consequence of the *Sovereign Will of the People* having controul over both. That such Terms and Principles are unknown to the Records of Parliament, and of our Courts, and to the Writers of best Authority in the Law; and they are wholly inapplicable to our Constitution; they give the appearance of the King in Parliament, and the King out of Parliament being distinct persons, with distinct, and unequal authority; whereas, the King is known to the Law and Usage of the Realm, only as one single person, acting in one single political capacity, with no other distinction than that of being in greater state and dignity, when sitting in Parliament. All questions, therefore, to ascertain whether the Legislative or Executive Power is intitled to have a pre-eminence or controul, however proper for debate in other Countries, are with us, idle and useles, to say the least of them *.

XIX. That the Supreme Power of the English Government does not appear naturally
to

* The philosophising Politicians, to whom I allude, are LOCKE and MONTESQUIEU, with their followers. It is greatly

to divide itself into Legislative and Executive, strictly so called. 1st. Because the Parliament

is

greatly to be lamented, that *Mr. Justice Blackstone* should abandon his own guide Lord Hale, and follow, in this particular, such incompetent Authorities. He thought, probably, he should give a scientific cast to his performance, and should acquire a new sort of fame by this mixture from the fashionable philosophy of the day. In this compliance, he has sacrificed the character of the Lawyer, to the Philosopher and the Writer; and has run himself into contradictions, and incoherences, which will be injurious to his reputation, when they are duly considered. I recommend to Mr. Christian, and his other Commentators, to animadvert upon such doctrines for the benefit of the Students, whether Old or Young.

I protest, I had totally forgotten, that *BLACKSTONE* had given countenance to these erroneous opinions; and I could not, till I lately turned to the first volume of the Commentaries, account for persons, of any reading at all, not comprehending what appeared so plain to me, and what I have since found, had appeared so plain to the Attorney General. The young men will ever beat us in the Grammar Rules; but it is important, that those rules should be correct. The Attorney General has not, I believe, once used the term legislative, or executive, in his sketch of the Constitution; and I give him the tribute of a Lawyer's Thanks for this deference to the genuine recorded Language of the Law.

To convey to Mr. Christian what I mean, I will add a few words, though it will, in some measure, be a repetition of what, I have before been arguing. *Blackstone*, having laid down from Montesquieu and Locke, I suppose, that where the legislative and executive are united in the same person, there can be no public Liberty, goes on thus; "with us, therefore,
" in

is expressly summoned upon arduous affairs concerning the State, and defence of the Kingdom ;

“ in England the Supreme Power is divided into two branches ;
 “ the one legislative, to wit, the Parliament, consisting of
 “ King, Lords, and Commons ; the other executive, consist-
 “ ing of the King alone.” This seems to me to be an imagination, of his own, without any authority from our Law Writers ; and it is an unfortunate blunder, which should not stand at the head of a systematic treatise on the Law and Constitution. For if the Parliament consists of King, Lords, and Commons, all *in pari gradu*, as it sounds here, this is a republic ; but if the King *alone* can carry on the executive, as he expressly says, it is a despotism : that is, the Lords and Commons, according to this definition, are necessarily united with him in the Legislative ; but he stands alone in the Executive, and may employ any unofficial Clerk, or even a yeoman of the guard in its various departments. Such is the plain sense of this passage ; which many have swallowed without thinking about it, who yet were choaked with my saying, that it is from the King *alone* we derive the benefits of Law and Government ! though my position is true, and I have shewn it to be so, and this is obviously erroneous, as will now be seen.

Blackstone must have known, that the King can no more carry on the Executive *alone*, than the Legislative. He certainly knew, that the Privy Council, the Lord Chancellor, the Secretaries of State, the Commissioners of the Treasury, and Admiralty, the Judges, the Justices, are constituent parts of the Executive, and all of them as necessary to its functions, as the Lords and Commons are to those of the Legislative. The truth is, the King can do no act of executive Government, any more than of Legislative.

Kingdom ; and it is in fact employed, not only in a Legislative Capacity to frame and propound

gislative, without advisers ; they are indispensably necessary, out of Parliament, as much as the Lords and Commons are in Parliament ; they were, therefore, equally intitled to be specified in this definition ; but to exclude them wholly, by the word *alone*, is one of the most extraordinary oversights, I ever met with, in a systematic work.

Our Commentator might have escaped this error, and yet adhered to his new-fashioned division of Legislative, and Executive, and to the favorite notion of those powers not being united in the same hands (at least in their exercise) by altering the sentence in this manner. " With us, therefore, in England, " the Supreme Power of the King is divided into two branches ; the one Legislative, to wit, the Parliament, consisting of " the Lords and Commons ; the other Executive, consisting of " the various Officers of the King out of Parliament." The passage thus altered, would be correct, according to his own division ; but then, it should not be followed by another error, two lines lower, where he says, " The Legislative Power is, of course, the Supreme Authority in the State ;" for Lord Hale shews us, that it is only half of the Supreme Power, the Executive being the other ; and this opinion of Lord Hale is meant to be conveyed in the above amended passage.

Indeed Blackstone in a subsequent chapter " on the Councils " *belonging* to the King," convicts himself of this deviation from principle. He there has these words : " For in order to " assist him [the King] in the discharge of his duties, the maintenance of his dignity, and the exertion of his Prerogative, " the

propound Bills, to, be passed into Laws, but also in matters of judicature, and in various other

“ the Law hath assigned him a diversity of Councils to advise
 “ with. The first of these is the High Court of Parliament,
 “ whereof we have already treated at large.” From these words, it appears, that our Commentator had come back to a right understanding of the Supreme Power in the State; for, if the Parliament is one of the Councils, that *belong* to the King, to advise, and assist him; and if the duties, dignity, and prerogatives above alluded to, are the King's, it should seem, that the Supreme Power (which, I suppose, is meant to be included in all these duties, dignity, and prerogatives) is not in the King, Lords, and Commons, but in the King alone, and the Lords and Commons are the Council to assist and advise him, in discharging, maintaining, and exerting them. This is the true language of the Law; here he follows Hale, and Coke, and is right; in the former passage he was lead astray by Montesquieu, and Locke; and so, proceeding upon extra-judicial principles, it would be wonderful, if he had not been wrong.

Our Commentator must have felt his own inconsistency, when he was obliged to inform his reader, that of one of the Councils belonging to the King (which, according to the natural order of his subject, he should state in this Chapter) he had *already* treated at large; for he must have been Conscious, that he had already treated it, not as a Council *belonging* to the King, but as the Supreme Power in the State, to which the King seemed rather to *belong*.

I have before remarked upon the impropriety of beginning by treating of the Parliament, which is one of the King's Councils,

other matters relating to the conduct of what is called, The Executive Government. 2dly. Because the King in, what is called, his Executive Capacity, has a prerogative, in certain matters, to make regulations, that have a bind-

ing, before he treats of the King, to whom the Council belongs.

In a subsequent part of the same Chapter, where we have seen, he had stated the Legislative as lodged in the King, Lords, and Commons, in a sort of Copartnership, share and share alike, he afterwards returns to the true notion and language of the Law of England, speaking "of the King's Majesty in his "royal Political Capacity, and the three Estates of the Realm." There ought to be no doubt, where the Supreme power is lodged, after it has been expressly defined by Parliament. "This "realm of England is an empire governed by ONE SUPREME "HEAD AND KING, having the dignity and royal estate of the "Imperial Crown of the same." So says Stat. 24. Hen. 8. Cap. 12. Is this Statute repealed, or has any new settlement been made of the Supreme Power in King, Lords, and Commons, jointly, in equal power and dignity? Those who controvert what I contend for, should prepare themselves in the first place to answer this question.

I have before noticed, that Mr. Professor Wooddeson has followed his predecessor, both in doctrine and arrangement; it may be hoped, however, for the honor of English Jurisprudence, that he will reform these to the purity of the ancient School, for which he has the authority of his Cotemporary the Attorney General; and thus remove the only blemish, I know, his most excellent Lectures.

ing force, equally with the Laws made by the Legislature. That the Supreme Power performs its functions without reference to any such division, or distribution of Authority; but only with reference to the respective Councils, Advisers, and Officers, which are known to, and defined by, the Law. These attend on the King, in their respective departments, tendering their advice, and ready with their ministration, to assist, and to carry on the detail of the Royal Authority. The Interior Circle of these Counsellors are the great officers, who are more constantly and more immediately employed in receiving his pleasure on the ordinary conduct of public affairs, and who constitute the principal part of his Privy Council; the Outer Circle of all is the Parliament, or Great Council of the realm, which comes more in contact with the People at large, being composed of those who represent all the Estates of the People of this realm. The constituent members of this Council, and the very high concerns which are there moved and resolved, contribute to make this department of the State the most interesting and important of all the operations of the Monarchy. That by the Law, and Usage of the realm, The King must perform the functions of his Government by one or other of these Councils, Advisers,

Advisers, or Officers ; and each of these Councils, Advisers, and Officers has a distinct power and competency which cannot be exceeded. That, in former times, all these have been brought, as it were, to act together ; the Privy Counsellors, and other Advisers, and Officers have sat embosomed in the Parliament ; and The King, thus surrounded with all the organs of his Authority, *in Concilio, in Parlamento suo*, has, at once, transacted such matters, as properly belonged to the Parliament, and, at the same sitting, done various other Acts, which did not need the authority of Parliament *. In later times, The King has more usually advised with these Counsellors, and Officers, a part from each other, and only upon such matters, as belong to their respective departments. This separation may be conducive to order and simplicity in the national business ; but cannot make any difference in the Unity of the Monarchy, which remains still the same, one and intire.

* This is well known to those, who have looked over the Rolls of Parliament, or the small selection made by RILEY, under the title of *Placita Parliamentaria*. The result of such research may be seen shortly stated in Mr. Reeves's History of the English Law ; see the Index title, COUNCIL and PARLIAMENT.

I have gone even further than this ; I have shewn that our accusers are really censurable in all the points, where they intended to censure us. I have shewn, that they are unsound in their Doctrines ; and that moreover they have been guilty of a Great Crime in attempting to charge us with a less one ; as to Prudence, if there is any Question of that, the fault lies also with them ; who by their cavilling have raised Questions upon Points, which no man of any real Information questioned before. I beg leave again to ask *why then was MR. REEVES, prosecuted*, and what is now to be said of those who caused the prosecution ?

Upon the Article of Prudence,—it seems to me a very Easy thing to be prudent, where Men have little to do or to say ; but give me the prudence of MR. REEVES, which had never been so plainly manifested, but for this virulent and senseless prosecution of party. It now appears distinctly to the Public, that after standing Exposed to the Assaults of the seditious, and disaffected for five Years, during which he has been watched in all he has done, and narrowly scanned in every thing, that has been published under his Sanction, they have not been able to nurse up into an Accusation any of their many
vaunted

vaunted Charges, and Imputations, but the present, which has ended in their own Discomfiture, and Confusion. It is indeed a triumph, very unusual in a Judicial Controversy, to be able, after clearing yourself, to prove upon your Accusers, a greater degree of indiscretion, of error and of Criminality, than they presumed to impute to you.

I consider this Discomfiture and Confusion so Complete, that I might now successfully pursue my Advantage with Accusations and Charges against them in my turn; but I do not now mean to proceed further than a *Defence*:

Perhaps, many well informed Persons may think I have said more by way of Defence than was necessary; and many may think that after so long silence, a Defence was not necessary, even if the Case originally needed one. But my own feelings, which are something to me, even in my obscurity, and much more those of MR. REEVES, who has both a public and private character at stake, in this discussion, seemed to demand it; something also seemed to be due to the true and sound principles of the Constitution, which had been attacked, and might, by such silence, be considered as abandoned. I thought it therefore necessary,
and

and becoming both the Good Cause, and ourselves, to enter this *Protestation* in favour of our Valuable Establishment in Church, and State. I do this in the like sentiments of Obligation, which influenced the venerable *Hooker*, when he undertook to combat the Sedition and Difaffection, which prevailed in his Time; and I shall close this Short Defence of our Civil Polity, in the same good old English Phraseology, with which he has commenced his Defence of our Ecclesiastical one. “ Though for no other Cause, yet for this, “ that Posterity may know, we have not loofely, “ through Silence, permitted things to pass away, as in a Dream, there *shall* be for “ Men’s Information extant *Thus much*, “ concerning the present State of the Government established among us, and *their* careful Endeavours which would have upheld “ the same.”*

* Eccl. Polit. Preface.

Nov. 1797.

F I N I S.

POSTSCRIPT.

AFTER bestowing so much time to make a few plain words understood, it may be expected, that I should subjoin some little animadversion on those, who gave themselves the trouble, to make them misunderstood, and who have caused so much labour to me, and uneasiness to Mr. Reeves; but I shall adhere to the limits I have imposed on this defence; I wish nothing to be now said by way of recrimination, or complaint, further than what has already escaped from me incidentally, as it arose out of fair argument, and the discussion of the question. I hope the persons alluded to, will read what I have written, and I dare say, they have candor and impartiality enough, at this distance of time, to correct themselves.

It

It is with pleasure, I turn from persons, who made themselves my Arraigners and Censurers, to Those, who very generously stepped forward in my defence; I know that this patronage was a tribute to Mr. R——, and not to me; but it becomes me to be thankful for the credit thereby gained to my undeserving performance.

At the head of these is Mr. Windham, to whom I beg to return thanks for the clear exposition he made of the passage excepted to, and the pains he took to satisfy all, who heard him, of its true and innocent meaning; I am indebted to Sir William Dolben for the like spirited support. When this cause was delivered over to the Courts, it came into the hands of Mr. Plumer, a fast friend, and a brother associator of Mr. R——, and a ready advocate to defend him upon this occasion. The speech made by him at the trial was acknowledged, by all present, to be an excellent display of bar-eloquence, that added considerably, to that Gentleman's former reputation; if this had been published, it would have spared the whole of what I have said on the construction of the paragraph.

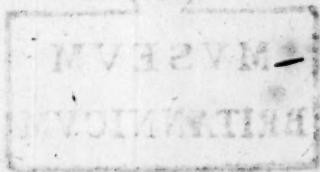
After

After these public men, I must return thanks to some Gentlemen, who took up their pens, either to redress the particular wrong done to Mr. R——, and me, or to vindicate the general right to FREEDOM OF DISCUSSION. Among these, there is a pamphlet, full of sound learning and argument by Mr. Brand, a Clergyman, well known for his writings in defence of our Establishment, in Church and State: There is a pamphlet of much spirit from Mr. Cawthorne, and a sensible tract from Mr. Moser: There was one published without a name, in which, I think, we discover the learning, acuteness, and solid sense of Mr. Chalmers. To these performances I refer the reader for more satisfaction on this subject, than I pretend to afford. The different lights in which they have placed the matter in debate, cannot fail of giving the pleasure of variety*. I may adduce these defences

* The titles of these pamphlets are as follows.

1. A Defence of the Pamphlet ascribed to John Reeves Esq. and intitled "Thoughts on the English Government" by the Rev. J. Brand, A. M. addressed to the Members of the Loyal Associations against Republicans and Levellers; printed for Longman.

2. A



fences as further testimonies on my side, and I should inform the reader, that there has not been any one Answer attempted to what these Gentlemen have urged in my behalf. After such a silence, the truth and innocence of my first Letter ought to stand *pro confesso*; and this further defence might, perhaps, seem superfluous; but there generally is a curiosity to hear, what a culprit has to say for himself; an author is seldom backward on such occasions, and I am happy, at once to gratify the public expectation, and my own solicitude, by this explanation, which I have now given under my own hand.

2. A Letter to the King in Justification of a Pamphlet entitled "Thoughts on the English Government," with an Appendix in answer to Mr. Fox's Declaration of the Whig Club; printed for Owen, Piccadilly.

3. An Examination of the Pamphlet entitled "Thoughts on the English Government, addressed to the Quiet Good Sense of the People of England," by Joseph Moser; printed for Owen.

4. A Vindication of the Privilege of the People, in respect to the Constitutional Right of Free Discussion; with a retrospect to various proceedings relative to the violations of that right; printed for Stockdale.

FINIS.

PH

